

National report for Croatia

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1. Main features of the national enforcement procedures for recovery of monetary claims (general overview)

1.1. Briefly present domestic legal sources on enforcement

The *sedes materiae* of the Croatian enforcement law is the Enforcement Act (hereinafter: the EA).¹ This Act is complemented by several other acts, including the Conducting Enforcement over the Pecuniary Means Act² as well as for specific domains the Family Act,³ the Maritime Code⁴ and the Tax General Act⁵ which subsidiary refer to the EA as *lex generalis*. The EA is also subsidiary relying on the rules established in the Civil Procedure Act (hereinafter: the CPA).⁶ The rules essentially govern procedural issues related to organisation and structure, competence and functional aspects, as well as substantive issues such as the existence of the claim, the object of enforcement, effects of enforcement of the rights of third parties, priority etc.⁷ The proceedings for securing claims are also regulated under the EA, but they do not fall within the scope of this report.

1.2. Was there a recent reform or is there an ongoing reform in progress? If yes, please comment the changes introduced by the reform or proposed solutions.

The most recent amendments to the EA, which entered into force as of 3 August 2017, aim at instituting a fair balance between the interests of the creditors to use certain means of enforcement and the property interests of the debtors, in particular when it comes to the enforcement against an immovable and enforcement against the wages. In relation to the immovable, the restriction is introduced that this means cannot be used unless the due main amount (without interests) is less than HRK20,000. The court may also refuse enforcement against an immovable where the due main amount is above that sum but is convinced that this would disrupt a fair balance between the interests of the creditor and the debtor.⁸ There is also a new right of the debtor who for the purpose of collecting pecuniary claim had to move out of an immovable sold in the enforcement proceedings. Under certain conditions, such debtor may claim that pecuniary compensation for housing expenses in limited period of time is paid to him or her from the state budget.⁹ Amendments concerning the enforcement against the debtor's wages introduce another social element in the system by increasing the portion of the wage which cannot be subject to enforcement, provided that the wage is lower than the average net wage in Croatia. In such situations, instead of 2/3 of the wage exempted from enforcement, the amount is now 3/4, but no more than 2/3 of the average net wage in Croatia. Rules are stricter in some cases, especially for debt arising out of non-paid alimony for the

¹ *Ovršni zakon*, Narodne novine 112/2012, 25/2013, 93/2014, 55/2016 and 73/2017.

² *Zakon o provedbi ovrhe na novčanim sredstvima*, Narodne novine 91/2010 and 112/2012.

³ *Obiteljski zakon*, Narodne novine 103/2015.

⁴ *Pomorski zakonik*, Narodne novine 181/2004, 76/2007, 146/2008, 61/2011, 56/2013 and 26/2015.

⁵ *Opći porezni zakon*, Narodne novine 115/2016.

⁶ *Zakon o parničnom postupku*, Službeni list SFRJ 4/1977, 36/1977, 36/1980, 6/1980, 69/1982, 43/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, Narodne novine 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011, 25/2013 and 89/2014.

⁷ Mihajlo Dika, *Gradansko ovršno pravo, I. knjiga* (Zagreb: Narodne novine, 2007) 6-7.

⁸ Art. 80b of the EA. See more in Gabrijela Mihelčić, *Novine u ovršnopravnom uređenju*, in: *Aktualnosti hrvatskog zakonodavstva i pravne prakse*, (Zagreb: Organizator, 2017) 229-299, especially, 240-241.

⁹ Arts. 131a-131c of the EA.

child.¹⁰ Furthermore, application of the EU law related to account seizure¹¹ is made more efficient. In regard to less recent reforms, see 1.3.

Some have expected that the amendments might also provide a response to the recent CJEU judgments in cases C-551/15 and C-484/15. However, this has not happened and legislative reform to tackle this issue is nowhere near the horizon. Because of its far-reaching effect and different approaches by Croatian courts, this issue still merits being mentioned here in more details. The question at focus is the exclusion of the Notary Public from the concept of the “court” under the B IA and the Regulation 805/2004. Namely, in *Pula Parking* the *Općinski sud u Puli-Pola* asked, whether the B IA 1215/2012 should be interpreted as meaning that, in Croatia, the Notaries, acting within the framework of the powers conferred on them by national law in enforcement proceedings based on a trustworthy document (see 1.6.), fall within the concept of “court” within the meaning of that regulation. In its negative reply, the CJEU’s based its motivation on several reasons, including the difference between the judicial and the Notary Public function, the difference between the Succession Regulation¹² and the B IA, the former explicitly mentioning the public notaries unlike the latter, the context and the objectives of the B IA in interpreting the term “court”, and principles of mutual trust and mutual recognition, while also strongly objecting to the fact that examination, by the Notaries, in Croatia, of an application for a writ of execution is not conducted on an *inter partes* basis.¹³ This having been said, the CJEU seems to have not taken notice of the fact that whenever there is an objection by the defendant in the enforcement proceedings before the Notary Public in Croatia, the case is automatically transmitted to the competent court, which proceeds in making the decision and ensuring the contradictoriness of the proceedings. Besides, there is a period of 8 days which is left to the defendant to wilfully fulfil the obligation in question, before the expiry of which no enforcement measures can take place.¹⁴ Although these circumstances might not have prevailed in relation to the outcome of the question whether a Croatian Notary Public is a court, they could have been relevant within the CJEU reasoning related to *ex partes* character of the proceedings. Namely, in the earlier CJEU case law, deciding in the court proceedings in which both parties were not heard is not an obstacle for recognition or enforcement, because the decision could have been the subject of submissions by both parties before the issue of its recognition or its enforcement pursuant to the Brussels rules came to be addressed.¹⁵

The Croatian courts have been struggling as to how to approach this the newly created situation. Some courts have decided to proceed with the case on the merits after there was an objection as to jurisdiction raised before the Notary Public because they considered

¹⁰ Art. 173(2) of the EA.

¹¹ Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ L 189, 27.6.2014, pp. 59–92.

¹² Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012, pp. 107-134.

¹³ CJEU, judgment in case C551/15, *Pula Parking d.o.o. v Sven Klaus Tederahn*, 9 March 2017, EU:C:2017:193.

¹⁴ Art. 283(1) of the EA.

¹⁵ CJEU, judgment in case C39/02, *Mærsk Olie & Gas A/S v Firma M. de Haan en W. de Boer*, 14 October 2004, EU :C:2004:615, para 50. Detailed discussion of the judgment is presented in Marko Bratković, *Zašto hrvatski javni bilježnici nisu sud*, *Zbornik Pravnog fakulteta u Zagrebu*, (67-2/2017), 287-317.

themselves having the jurisdiction to decide the case,¹⁶ others have ended the proceedings by dismissing the application for enforcement invoking Art. 279(1) of the EA according to which the Notary Public is competent to decide in cases where the defendant's domicile is within its local jurisdiction.¹⁷ Some cases relied on the latter ground together with an additional one being that the Croatian Notary Public is not the "court" within the meaning of the B IA while the dispute falls within its *rationae materiae* of the Regulation.¹⁸ There is also a different approach taken by some other court which have ruled that the B IA was not applicable to these cases and that when the defendant's domicile is not in Croatia, any Notary Public may have jurisdiction to issue the writ of execution.¹⁹ An early decision by the Supreme Court of the Republic of Croatia in a case of Pula parking versus an Austrian company, it was first held that the court should have had dismissed the enforcement application based on Art. 279(1) of the EA right away. It further held, that if the court failed to do that and instead proceeded under the rules for contentious proceedings, the question of whether the Notary Public was competent to issue a writ of execution, ceased to be of any relevance. Rather, the court is then obliged to verify its jurisdiction to proceed on the merits.²⁰

1.3. Please indicate whether there exists an underlying philosophical or dogmatic framework for your system of enforcement.

Civil enforcement is understood as the proceedings in which the coercion, ordered by the Court or the Notary Public, is used against the respondent for the purpose of realisation of the applicant's right.²¹ Thus, the sovereignty element in the exercise of the enforcement seems to dominate the conceptual basis of the system. If one were to qualify the Croatian enforcement system under the categories proposed by Hess,²² it would fall under the broader category of the court-oriented systems, often called the Franz Klein systems by the name of the famous Austrian jurist. It is also traditionally a centralised system. However, a past decade is witnessing a slight shift away from the strict court-orientation and centralised structure. The three stages were the introduction of the function of Notary Public into the enforcement procedures in 2005, the introduction of the role of the Financial Agency (the Croatian acronym is FINA),²³ acting along with the Croatian National Bank and banks, in the enforcement of the pecuniary claims, available since the beginning of 2011, and further advancement of the FINA's competences in the form of the direct collecting (*izravna naplata*)

¹⁶ In particular in commercial cases, see decision of the Commercial Court in Zagreb, Povrv-3361/16 of 24.08.2016, confirmed by the decision of the High Commercial Court, Pž-7269/2016-2.

¹⁷ This is the situation in virtually all cases before the Municipal Court in Pula. See in this respect page 27 of the transcript from the talk "214. tribina: Zašto hrvatski javni bilježnici nisu sud? U povodu presuda Suda EU-a *Pula parking i Zulfikarpašić*" held on 27 June 2017 in Zagreb, accessible at: <https://www.pravo.unizg.hr/images/50018419/214%20lipanj%20Bratkovic%20L.pdf> (last visited on 22 February 2018).

¹⁸ See e.g. decision of the Commercial Court in Rijeka of 20.11.2017.

¹⁹ See e.g. the decision of the Country Court in Split, Gž Ovr 1011/2016-1 of 06.07.2016, overturning the decision of the Municipal Court in Split, Ovr-588/16 of 04.04.2016, which dismissed the enforcement application based on Art. 279(1) of the EA.

²⁰ Supreme Court of the Republic of Croatia, Revt-419/16-4 of 15.03.2017.

²¹ See generally Mihajlo Dika, *Građansko ovršno pravo*, I. knjiga (Zagreb: Narodne novine, 2007) 1-5.

²² Hess proposes four categories based on the enforcement organs: 1) bailiff-oriented systems (known also by the French terminology as *huissier de justice*), 2) court-oriented systems, 3) mixed systems, and 4) administrative systems. Burkhard Hess, *Comparative Analysis of National Reports*, in: M. Andenas, B. Hess & P. Oberhammer (eds.), *Enforcement Agency Practice in Europe - JAI/02/FPC/19/UK*, (London: BIICL, 2005), available at http://www.biicl.org/files/5001_enforcement_agency_practice_in_europe.pdf (last visited on 31 May 2016) 33-36.

²³ The FINA was established by the Republic of Croatia by the Financial Agency Act. *Zakon o Financijskoj agenciji*, Narodne novine 117/2001, 60/2004 and 42/2005.

through the FINA system, without the need for the involvement of either the court or the Notary Public as of October 2012.

1.4. Are there different types of enforcement procedures in your member state?

Comment: *Does the legal framework in your member state provide for different and/or multiple types of enforcement procedures in civil or commercial matters, e.g. does it envisage special regime for enforcing money claims on the one hand and non-money claims on the other? Does it envisage shortened/simplified/summary proceedings for certain claims etc.? Also, explain interconnections between administrative and civil enforcement procedures, if existent and any other possible interrelation with other fields of law.*

See 1.6.

1.5. Is your system of enforcement considered to be centralized or decentralized?

Comment: Decentralization may manifest itself in various forms. For instance, in decentralized jurisdiction (both subject-matter and territorial come into play); decentralized rules of procedure (in federative states where different levels (both horizontally and vertically) of government and authorities have to be taken into account; the power and scope of the court and/or other authority/body in enforcement matters – does it hold competence in all matters enforcement or are certain acts ('steps' of the enforcement procedure) ascribed/delegated to different authorities. Please provide a general overview on the above matter. In addition, please specify which authority/body is competent in matters of (refusal of) recognition and enforcement (is there a special authority/body at the 'level of the state' which decides on said matters, or does the individual for instance – akin to countries with common law – file an action on the foreign judgment.

See 1.3., 1.6. and 1.12.

1.6. The authorities/bodies and agents involved. Which authorities/bodies have competence with respect to enforcement?

Either the court or the Notary Public may order civil enforcement. The courts are competent to order enforcement based on the document bearing the *titulus executionis*, while the Notaries are competent to order enforcement based on trustworthy documents. Yet, the Notaries' authority is limited to situations where there is no objection by the defendant. In case of an objection raised against the enforcement decree, the courts resume the enforcement proceedings. The activities related to realisation of the enforcement ordered by the court (in cases concerned with the enforcement title documents) or the Notaries (in cases concerned with trustworthy documents) are carried out by the enforcement administrators²⁴ or the FINA, along with the Croatian National Bank and banks in general, as the case may be. Thus, as a rule where the basis for enforcement is the enforcement title document, the enforcement activities are carried out by the court – the judge and the court employees, and the progress of

²⁴ The execution administrator is the employee of the court who directly undertakes actions in the enforcement proceedings (Art. 2(10) of the EA).

the enforcement proceedings is ultimately controlled by the court. In situation in which a basis for enforcement is a trustworthy document, the Notaries, as a profession of public credibility, are competent to act, so that ordering of the enforcement and carrying out of the activities related to enforcement lay within them. However, the situation in which an objection is raised by the respondent results in the competence being exercised by the courts again.²⁵ The situations falling within the FINA's competences are twofold: where FINA is acting merely as the one carrying out the enforcement against pecuniary means ordered in the enforcement proceedings by the court or the Notary Public, it is the FINA's responsibility to carry out the activities related to enforcement, such as keeping the records, blocking the accounts, transferring the monies. The proceedings remain under the ultimate control of the courts or the Notary Public as the case may be. However, a special feature of the Croatian enforcement system is the direct collecting – a function of the FINA which enables creditors to obtain enforcement of certain pecuniary claims without the need to involve either the court or a Notary Public. This route is available for the certain subcategories of the enforcement title documents (enforceable court decisions and settlements, enforceable administrative and employer's calculation of matured wage and other employment-related payments) which became enforceable as of 15 October 2012.²⁶ By analogy with the CJEU judgment in *Pula Parking* concerning the Notaries, it may be concluded that this enforcement route is not able to benefit from the B IA enforcement system.

1.7. How 'private' is the system in actuality, if it is private at all?

Comment: *The above term 'private' refers to the role of a 'private individual' in enforcement proceeding (both the creditor, debtor and other involved persons), i.e. how much significance do his actions and omissions hold; how much does he partake in advancing the procedure to later stages; is he involved in the designation of means of enforcement etc. In other words, describe the weight that the principle of 'dispositivity' holds in your system, in contrast to the ex officio powers of the court or other authority/body.*

1.8. Briefly enumerate the means of enforcement (methods which serve to procure involuntary collection of the claim).

Under the principle *nulla executio sine lege* enshrined in the EA, the means of enforcement are enumerated in the closed list. As a rule, enforcement may be ordered and conducted by any means of enforcement using any object of enforcement for that purpose which is identified by the applicant, irrespective of the nature of the enforced claim.²⁷ Yet, owing to the nature of the claims, the law differentiates between means of enforcement measures to carry out the involuntary collection of the pecuniary claim and those available to coerce realisation of non-pecuniary claims. Examples of the former are: enforcement against an immovable,²⁸ enforcement against a moveable, enforcement against debtor's pecuniary receivables, enforcement against the debtor's claim to have an immovable or a moveable handed over, enforcement against the stocks or shares in the company, enforcement against other property such as patents, *ususfructus* etc.²⁹ Examples of the latter are: enforcement to

²⁵ See infra section 2.2.

²⁶ Art. 209 of the EA.

²⁷ There are only minor exceptions. See Gabrijela Mihelčić, *Komentar Ovršnog zakona*, (Zagreb: Organizator, 2015) 31.

²⁸ This has been subject to the most recent amendments to the EA. See 1.2.

²⁹ See Arts. 74-245 of the EA.

hand over and deliver a moveable, enforcement to vacate and hand over an immovable, enforcement to receive performance, endurance or omission, enforcement to return an employee back to work, enforcement to divide an immovable or a moveable, enforcement to obtain a statement of will.³⁰

1.9. In short, present the underlying principles which govern the enforcement procedure in short.

Comment: *Focus on both the principles which adhere to enforcement procedure in international capacity, e.g. territorial, sovereignty principle regarding coercive measures and the principles relating to procedural aspects in narrower terms e.g. principle of efficiency, protection of the debtor, priority principle, publicity, (non)mandatory hearing etc.*

Basic principles of Croatian civil enforcement law are general and specific ones. General are: principle of compliance with constitution and laws, principle of legal interest, principle of economic efficiency, principle of formal legality, and balance between the principles of party disposition and *ex officio* acting, principle of written proceedings, principle of good faith in exercising procedural rights, principle of urgency, while some procedural principles have limited scope such as principle of hearing the parties and principle of establishing the substantive truth. Special principles of enforcement law are: principle of priority, parity and exclusivity, principle of transparency of the debtor's property, and there is also balancing between the principle of protecting enforcement debtor and the principle of protecting the enforcement creditor.³¹

1.10. Does the stage of 'permitting the enforcement' exist in your legal system? Please comment, e.g. German 'Titel mit Klausel'.

Comment: *The stage of 'permitting the enforcement' is a mandatory phase of the enforcement proceedings found in certain member states, in which the court examines the enforcement title and specifically checks if all the (procedural and substantive) prerequisites for enforcement are met. If all prerequisites are found to be present, then the court allows for the enforcement to be undertaken and the enforcement proceedings enter the following phase of the procedure. The court thus issues a 'decision' or 'order', permitting the enforcement. The described phase is a pre-course to further enforcement action. It can also act in the capacity of 'title import' for foreign judgements, which means that member states withholding this stage will not be as greatly affected by the abolition of *exequatur* as those lacking it.*

The enforcement court will proceed based on an enforcement title document provided it is enforceable, which is proven by the enforceability certification (*potvrda ovršnosti*).³² In addition to enforceability certification, the enforcement title document needs to be suitable for enforcement. Suitability derives from the content of the document, essentially it has to be explicit enough to identify the creditor, the debtor, the type, extent and time for performance of the obligation. In case of decision which orders certain performance, it has to contain the period of time for voluntary performance; which if missing is provided by the enforcement

³⁰ See Arts. 246-277 of the EA.

³¹ See Mihajlo Dika, *Građansko ovršno pravo*, I. knjiga (Zagreb: Narodne novine, 2007) 42-81.

³² Art. 25 of the EA.

court.³³ Suitability is also a condition for enforcing the trustworthy document and entails that it identifies the creditor, the debtor, the object, type, scope and time for fulfilment of the pecuniary obligation, while the invoice to the natural person not performing registered activity needs also to contain the warning that enforcement may be sought on the basis of this trustworthy document in case of non-fulfilment of pecuniary obligation.³⁴

It is important to note that Art. 19 of the EA particularly states that enforcement of the foreign court or administrative decision or decision of another foreign authority or enforcement of the foreign public instruments may be ordered and carried out in Croatia provided that such decision or instrument fulfils the enforcement requirements or if so prescribed by an act, international agreement or directly applicable EU legal instrument.

1.11. Subject-matter jurisdiction in enforcement proceedings. Please provide a short presentation of the judicial system – courts system.

Subject matter jurisdiction is defined in the Court Act³⁵ and other acts. Judicial authority in Croatia is exercised by ordinary and specialised courts and the Supreme Court of the Republic of Croatia. The ordinary courts are municipal courts and county courts. The specialised courts are commercial courts, administrative courts, misdemeanour courts,³⁶ the High Commercial Court of the Republic of Croatia, the High Administrative Court of the Republic of Croatia, the High Criminal Court of the Republic of Croatia³⁷ and the High Misdemeanour Court of the Republic of Croatia. Municipal and misdemeanour courts are established for the territory of one or more municipalities, one or more towns or parts of an urban area, and the county, commercial and administrative courts are established for the territory of one or more counties. The high courts and the Supreme Court of the Republic of Croatia are established for the territory of the Republic of Croatia. The Supreme Court of the Republic of Croatia is the highest court in Croatia. Other ordinary and specialised courts with jurisdiction in a particular technical or legal area may also be established by law.³⁸

According to the Court Act, municipal and commercial courts, within their subject-matter competence, handle recognition and enforcement of foreign court decisions.³⁹

1.12. Territorial jurisdiction in enforcement proceedings. Please provide a short description in this regard.

Territorial jurisdiction of the courts is established for each of the means of enforcement depending on the nature of such means. For instance, to decide and carry out enforcement against an immovable, the immovable has to be within the territorial scope of the enforcement court.⁴⁰ The same rule applied for enforcement against a moveable, and in case

³³ Art. 29 of the EA.

³⁴ Art. 31 paras 2 and 3 of the EA.

³⁵ *Zakon o sudovima*, Narodne novine 28/2013, 33/2015, 82/2015, 82/2016 and 67/2018.

³⁶ Misdemeanour courts will cease to exist as separate courts and will be joined with municipal court effective as of 1 January 2019.

³⁷ As of 1 January 2020, the High Criminal Court will be established to decide on appeals against first-instance county court decisions.

³⁸ Arts. 14 and 15 of the Courts Act.

³⁹ Art. 18 subpar 3 in conjunction with Art. 34 CPA and Art. 21 subpar 5 of the Courts Act in conjunction with Art. 34b of the CPA.

⁴⁰ Art. 79 of the EA.

the moveable is of unknown location, competence lays with the court for the place of the respondent's domicile or seat.⁴¹ In situations in which enforcement is against respondent's pecuniary receivables the competence belongs to the court for the place of the respondent's domicile/seat, in the absence of such domicile in Croatia, the respondent's residence, and in the absence of such residence in Croatia, the domicile/seat of the respondent's debtor, and in the absence of such domicile, the residence of the respondent's debtor.⁴²

When it comes to jurisdiction of the Notaries, Art. 279(1) of the EA provides for the competence of the Notary Public whose seat is in the unit of the local (regional) self-government where the debtor has its domicile or seat. Further on this see in 1.2.

1.13. How are conditional claims enforced in your member state?

Reciprocal and conditional claims are subject to specific provisions in Article 33 of the EA. If an obligation of the debtor established in the enforcement title document is conditioned upon prior or simultaneous fulfilment of an obligation by the creditor, the court will order enforcement upon the request of the creditor if he or she states to have fulfilled his or her obligation or made sure that it is fulfilled.⁴³ The creditor shall be deemed to have fulfilled his or her obligation or made sure it is fulfilled if the object of the owed performance was deposited as a court or notarial deposit, unless that is contrary to the content of his or her obligation established in the enforcement title document.⁴⁴ Similarly, if an obligation of the debtor established in the enforcement title document is conditioned upon the occurrence of a condition, the court will order execution upon the request of the creditor if he or she states that the condition has occurred.⁴⁵

When the debtor challenges the writ of execution stating that the creditor has not fulfilled his or her obligation or failed to make sure it is fulfilled, or that the condition has not occurred, the enforcement court may be in a position to decide this in the enforcement proceedings or to suspend the proceedings. The enforcement court will decide on the issue in the enforcement proceedings if: 1. the decision does not depend on the establishment of disputable facts or 2. if it depends on establishment of disputable facts, provided that either of the three requirements are met: a. the facts are well-known, b. they may be established by applying rules on legal presumptions, or c. the creditor proves or makes sure of the fulfilment of his or her obligation, or the occurrence of the condition by an official document or by a private document legalised by a Notary Public. In all other cases, the court will suspend the proceedings.⁴⁶

The creditor who fails to prove in the enforcement proceedings that he or she has fulfilled his or her obligation or made sure it is fulfilled, or that the condition has occurred, may initiate contentious proceedings, so that it might be established that pursuant to the enforcement title

⁴¹ Arts. 133 and 134 of the EA.

⁴² Art. 171 of the EA.

⁴³ Art. 33(1) of the EA.

⁴⁴ Art. 33(4) of the EA.

⁴⁵ Art. 33(1) of the EA.

⁴⁶ Art. 33(2) and (3) of the EA.

document he is authorised to demand unconditional execution for the purpose of realising his or her claim.⁴⁷

There are special rules for enforcement of conditional claims secured by a lien. The amount of a conditional claim which is secured by a lien shall be extracted and placed in court or Notarial deposition, and paid when the condition precedent is satisfied or when it is certain that the condition for termination shall not be satisfied. (2) If the condition precedent is not satisfied or if the condition for termination is satisfied, the extracted amount of the purchase price will be used to settle creditors whose claims have not been settled fully or have not been settled at all, and if there are no such creditors or if the entire amount is not exhausted after their settlement, the amount, that is, the rest of the amount shall be handed over to the debtor.⁴⁸

The EA provides for the special rule on enforcement of certain enforceable title documents which contain non-pecuniary claim on giving a statement (of person's will). If the fulfilment of the claim to give a statement (of will) depends on the fulfilment of some obligation by the creditor or on another condition, it is deemed that the debtor has given the statement when the creditor fulfils his or her obligation or when the condition in question is met.⁴⁹

1.14. Legal succession after the enforcement title was obtained: What has to be done to proceed with the enforcement against the successors? How about the creditor's successors, are any changes required in the enforcement title?

The EA contain certain provisions addressing this issue and sets rules for commencing the proceedings and continuing the proceedings. Thus, enforcement is ordered at the request and in favour of a person who is not specified in the enforcement title document as the creditor if: 1. transfer or passing of the claim to him or her is proved by a public document or a legalised private document, or 2. the transfer of a claim is proved by a binding decision rendered in contentious proceedings. This applies accordingly to enforcement against persons not specified as the debtor in the enforcement title document.⁵⁰

If in the course of the enforcement proceedings the creditor is changed, the new creditor may continue the proceedings provided that he or she proves: 1. transfer or passing of the claim to him or her by a public document or a legalised private document, or 2. the transfer of a claim by a binding decision rendered in contentious proceedings. The change of the creditor does not necessitate consent by the debtor. New creditor takes the proceedings in the state in which it found it at the moment of stepping in that position. This applies accordingly to the change on the debtor's side during the enforcement proceedings.⁵¹ Furthermore, the EA provides that Notary Public will suspend the enforcement proceedings if in the course of it is established that, prior to the commencement of the proceedings, the debtor died or ceased to exist.⁵²

⁴⁷ Art. 33(5) of the EA

⁴⁸ Art. 121 of the EA.

⁴⁹ Art. 277 of the EA.

⁵⁰ Art. 32(1) and (2) of the EA

⁵¹ Art. 32(3) and (4) of the EA

⁵² Art. 281(7) of the EA.

For whatever is not dealt with in the EA, may be resolved by application *mutatis mutandis* of the provisions of the CPA.⁵³ According to the CPA, proceedings are ended when a party dies or ceases to exist if the proceedings concern the right which are not transferred on the heirs or successors.⁵⁴ *Argumentum a contrario*, if a party to the enforcement proceedings has heirs or successors, they will step into the legal position of the deceased or the legal person which ceased to exist, including the procedural position thereof. The status of an heir or successor is proved by a legal document, such as a succession decree⁵⁵ or an excerpt from the company register. In an enforcement proceedings where the creditor was a natural person, the court has ruled that upon his death, his wife, as universal successor based on the deceased will, steps in the position of the deceased husband in all his civil law relations, including the position of the creditor in the enforcement proceedings.⁵⁶

Scholarly commentaries confirm that in a case concerned with a foreign decision, a party to the proceedings resulting in that decision, or its universal or singular successor may initiate the recognition proceedings.⁵⁷

1.15. Enforcement titles: Decisions (judgments and other court decisions), settlements, public documents. Please elaborate – how does your system define enforcement titles, e.g. via enumeration, general clause etc.? Also, provide a short commentary.

Enforcement may be ordered on the basis of either of the two sorts of documents: 1) the enforcement tile document (*ovršna isprava*) having the *titulus executionis*, such as an enforceable judgment, a court settlement, an arbitration award, or a document containing the *clausula exequendi* (a notarial deed), and 2) the trustworthy document (*vjerodostojna isprava*) which does not have the credibility of an enforcement tile document but merely indicates the existence of the claim, such as public document, invoice, excerpt from the company's financial books or bill of exchange accompanied with the protest. The difference between two categories of documents reflects in the (non-)conditionality of the enforcement ordered on the basis of each: While the enforcement of the former document category is ordered unconditionally, the enforcement of the latter is ordered under condition that the respondent does not object to the enforcement. Similarity is that they both categories of documents are defined by means of enumeration where the last indent is phrased to encompass "other documents which are defined as such under the law".

One peculiarity of the Croatian system is the executory debenture (*zadužnica*) introduced in 1996. Executory debenture serves the purpose of securing a claim. If confirmed by the Public Notary and entered into the Register of executory debentures and *bianco* executory debentures is enforced directly by the FINA as if this is enforceable enforcement decision. If

⁵³ Art. 21 of the EA.

⁵⁴ Art. 215b of the CPA.

⁵⁵ Decision of the County Court in Bjelovar Gž-1131/13-2 of 14.11.2013, Bilten 2013, in: Gabrijele Mihelčić, Komentar Ovršng zakona, (Zagreb: Organizator, 2015) 172-173, confirming that based on the succession decree the court can issue a writ of execution against the debtor's successor.

⁵⁶ Decision of the County Court in Varaždin, Gž-1603/08-2 of 05.03.2009, Zbirka odluka Županijskog suda u Varaždinu, GP-10 (2009), accessible at http://sudovi.pravosudje.hr/zsvz/img/File/sudska_praksa/Zbirka-GP-10.pdf, 135-136. The court further added that the fact that this claim was not explicitly mentioned in the list of assets in the succession decree does not prevent the widow to step into the late husband's position in the enforcement proceedings, as she was a universal successor on the basis of the husband's last will.

⁵⁷ Mihajlo Dika, in: Mihajlo Dika /Gašo Knežević/Srđan Stojanović, Komentar Zakona o međunarodnom privatnom pravu, (Beograd: Nomos, 1991), 339.

merely confirmed by the Notary Public without being registered, the FINA will proceed as if this is a request for direct collecting.⁵⁸ As such, the executory debenture is "a Croatian product"⁵⁹ and quite unknown in the comparative law.⁶⁰

1.16. Requirements for issuing the certificate, certifying that the judgment is enforceable (confirmation of enforceability) – procedural steps. Which procedural steps must be undertaken, to obtain the certificate?

The enforcement court will proceed based on an enforcement title document provided it is enforceable, which is proven by the enforceability certification (*potvrda ovršnosti*).⁶¹ Such certification (known as *clause exécutoire* or *Vollstreckbarkeitsklausel*) is issued by the court which rendered the decision whose enforceability is being confirmed.⁶² Actually, the original or the authenticated copy of the decision in question is often stamped, the stamp stating that the decision has acquired the enforceability character as of a certain date. Alternatively, the court may issue such certification on a separate sheet.

1.17. Service/notifications of documents and decisions (provide a wholesome picture of service and notification in the enforcement proceedings). Please present an overview of said activity, e.g. which documents are served and the method of service, how notifications are made.

1.18. Division between enforcement and protective measures.

Provisional measures are regulated under Title 33 of the EA. They are issued by the court upon the request of the applicant and verification whether the statutory requirements are fulfilled. They may be issued prior to or during a civil or administrative proceedings, and following its completion but before the completion of the enforcement. Thus the preliminary measure may also be ordered during the enforcement proceedings.⁶³ See also 4.6.

1.18.1. What and/or which provisional measures are possible (are provided for) in your member state? Enumerate and briefly describe.

There are two categories of provisional measures: measure to secure pecuniary claim and measure to secure non-pecuniary claim. The former is subject to the requirement that the applicant makes it probable that the claim exists⁶⁴ and that there is a risk that in the absence of such measure the defendant will prevent or make significantly more difficult to collect the receivables, by transferring, hiding or otherwise disposing with his or her property.⁶⁵ Art.

⁵⁸ Art. 208 of the EA.

⁵⁹ Branko Vukmir, Kritički osvrt na zadužnicu, *Pravo i porezi*, 4 (2010) 5-7.

⁶⁰ See further Branimir Marković, Branko Matić, Domagoj Karačić, Promissory note as payment security instrument in the Republic of Croatia, MPRA Paper No. 6325, posted 6 February 2008, available online at <http://mpr.ub.uni-muenchen.de/6325/> (last visited on 22 February 2018); Zvonimir Šafranko, Zaduznica i njezino novo pravno uređenje, *Pravo u gospodarstvu*, 49 (2010) 1487-1527;

⁶¹ Art. 25 of the EA.

⁶² Art. 36(2) of the EA.

⁶³ Mihajlo Dika, Građansko ovršno pravo, I. knjiga (Zagreb: Narodne novine, 2007) 859.

⁶⁴ Where the claim has been decided in the unappealable final judgment or court settlement or notarial document, the court deciding on the request for preliminary measure is bound by that judgment, settlement or document. Mihajlo Dika, Građansko ovršno pravo, I. knjiga (Zagreb: Narodne novine, 2007) 865.

⁶⁵ Art. 344(1) of the EA. Under paragraph 3, it is considered that such danger exists where the claim is to be collected abroad.

345(1) of the EA states that in order to secure a pecuniary claim any measure that achieves the purpose of such security may be ordered, in particular: 1. prohibiting the defendant to alienate or encumber movable property, seizure of this property and entrusting this property in the care of the applicant or a third party, 2. seizing and depositing of cash, securities, etc. in the court or a Notary Public, 3. prohibiting the defendant to alienate or encumber its immovable or rights *in rem* registered in his or her interest, along with the prohibition entry in the Land Registry, and 4. prohibiting the defendant's debtor to voluntarily fulfil his obligation to the defendant and prohibiting the defendant to receive the fulfilment of this obligation, or to dispose of its claims, 5. order to the bank to deny payment from the debtor's account to the defendant or a third party, when requested by the defendant, of the amount in regard to which the measure is issued. As this is not an exhaustive list, there might be other types of measures provided they serve the purpose of securing the payment.

Measure to secure non-pecuniary claim may be ordered provided that the applicant proves it probable that the defendant will prevent or make significantly more difficult to fulfil the claim, especially where that would change the current state of affairs, or that the measure is necessary to prevent violence or irreparable threatened damage.⁶⁶ Pursuant to Art. 347(1) of the EA, in order to secure non-pecuniary claims any measure that achieves the purpose of such security may be ordered, in particular: 1. prohibiting the alienation of movable which are relevant to the claim, their seizure and entrusting in the care of applicant or a third party, 2. prohibiting the alienation and encumbering the stocks, shares or holdings relevant to the claim, along with a prohibition entry in the relevant book and where necessary in the Court Register; prohibiting the use or disposal of the rights deriving from such stocks, shares or holdings; entrusting the managing of the stocks, shares or holdings to a third party; ordering an interim administration over the company, 3. prohibiting the alienation and encumbering of other rights relevant to the claim, along with entrusting the administration of those rights to a third party, 4. prohibiting alienating or encumbering of an immovable relevant to the claim or rights *in rem* registered over the immovable relevant for the claim, along with a prohibition entry in the Land Registry; seizing the immovable and its entrusting in the care and administration of the applicant or a third party, 5. prohibiting the defendant's debtor to hand over a moveable to the defendant, to transfer a right or carry out any other non-pecuniary performance relevant to the claim, 6. prohibiting the defendant to take actions which can cause damage to the applicant for measures and prohibiting any changes property relevant to the claim, 7. ordering the defendant to perform certain actions necessary to preserve the movable or immovable, or to preserve the current state of affairs, 8. authorising the applicant to keep the defendant's property, which is in his or her possession and which is relevant to the claim, pending the litigation, 9. authorising the applicant to itself or through a third party perform certain actions or procure certain property, especially in order to restore the previous state of affairs, and 10. temporarily returning the employee to work; paying the wages pending the labour dispute, if necessary for his or her maintenance and maintenance of persons whom he or her is obliged to support under the statute. Similarly to pecuniary measures, this list is not exhaustive, hence there might be other types of measures issued by the court upon applicant's request provided they serve the purpose of securing the performance.

1.18.2. Difficult requirements for protective measures. Which provisional measures are possible (are provided for) in your member state and what are the requirements for

⁶⁶ Art. 346(1) of the EA.

issuing them? Please accompany the answer with a comment on the 'difficulty' of actually meeting those requirements.

In this context it is important to note that when it comes to any of the categories of the preliminary measures, the rules is the same for proving the probability of the claim. Where the claim has been decided in the unappealable final judgment or court settlement or notary document, the court deciding on the request for preliminary measure is bound by that judgment, settlement or document.⁶⁷ This makes the situation easier for the applicant in most cases when the preliminary measure is requested in the course of the enforcement proceedings or immediately prior to it provided that the judgment in question is unappealable.

Another important note concerns the probability of risk. Under 344(3) of the EA, it is presumed that a risk exists where the claim is to be collected abroad. That means that applicant would need to prove probability that the defendant's property which may be object of enforcement is located abroad and that he or she will not have such property in Croatia when the enforcement will be sought. Likewise, the risk would be presumed where the applicant proves probability that in the event of losing the dispute the defendant would leave Croatia to live abroad and take all his or her property along. Additionally, such would also be the case where the probability is proven that the defendant who is living abroad would transfer all his or her property abroad, although such property is located in Croatia at the time the request for preliminary measure is made.⁶⁸

1.18.3. Comments and critical approach to your legislation. Please identify deficiencies of your national system, e.g. length of enforcement proceedings; success rate of enforcement; interconnectivity and over-lapping to other areas of law (insolvency proceedings).

As a systemic challenge for the Croatian courts handling enforcement cases is constant overload. Although in the period from 2013 to 2017 there is a tendency of increased efficiency in solving the enforcement cases, there are still many unsolved cases each year.⁶⁹ According to the document posted by the Croatian Chamber of Commerce, for many reasons the enforcement proceedings tend to be too long which opens an additional door for the debtors to hide or dispose of the property and sometimes results in no claim being realised.⁷⁰ There seems to be a more general problem with the enforcement systems, shared by many former socialist countries, which is due to negative perception in the public, insufficient budget, and overly formalised procedures.⁷¹

⁶⁷ Mihajlo Dika, *Građansko ovršno pravo*, I. knjiga (Zagreb: Narodne novine, 2007) 865.

⁶⁸ Mihajlo Dika, *Građansko ovršno pravo*, I. knjiga (Zagreb: Narodne novine, 2007) 868.

⁶⁹ See Izvješće Predsjednika Vrhovnog suda o stanju sudbene vlasti za 2017. godinu, (Zagreb: VSRH, 2018), http://www.vsrh.hr/CustomPages/Static/HRV/Files/2018dok/izvjesce_predsjednikaVSRH_o_stanju_sudbene_vlasti_2017.pdf (last visited on 15 April 2018), 32 and 45.

⁷⁰ Ovrha na pokretnini, <https://www.hgk.hr/documents/jk-ovrha-na-pokretnini578f8565b25be.pdf> (last visited on 15 April 2018), 1.

⁷¹ Alan Uzelac, *Privatization of Enforcement Services – A Step forward for Countries in Transition?*, in: C.H. van Rhee/Alan Uzelac (ed.), *Enforcement and Enforceability – Tradition and Reform*, (Antwerp: Intersentia 2010), 84.

2. National procedure for recognition and enforcement of foreign judgements

2.1. Which of the three systems is enacted in your system, disregarding EU or other international acts: (1) *Révision au fond*; (2) *Contrôle limité*; (3) *Ex lege*.

Croatian system for recognition and enforcement of foreign judgments is the system of limited control (*contrôle limité*). This is the tradition inherited from the former Yugoslavia,⁷² confirmed also in the Resolution of Conflict of Law with the Laws of Other Countries in Certain Relations Act (ZRSZ), adopted as a legislation in the former Yugoslavia,⁷³ and applicable in Croatia⁷⁴ until the newly adopted Private International Law Act (ZMPP)⁷⁵ enters into force on 29 January 2019. However, the essential elements of the approach to recognition and enforcement of foreign judgments remains intact. This having been said, the major change in Croatian private international law, did not take place because of the amendments in the national legislation, but as a result of Croatian accession to EU and direct application of the EU legal instruments in the field of private international law as of 1 July 2013.

2.2. What is the concept of 'recognition' and 'enforcement' of foreign judgements in your member state?

Comment: Please firstly evaluate the terms on their own and later-on conduct a comparison. In doing so, refer to the established theories on the subject-matter which strive to provide an explanation on the effects of decision on recognition and/or enforcement (does the decision hold constitutive effects; does the decision provide for an extension of effects from the state of origin and state of enforcement; does it cumulate both effects).

Recognition (*priznanje*) and enforcement (formerly *izvršenje*, now *ovrha*) are two forms in which a foreign decision may be integrated in the Croatian legal systems.⁷⁶ Recognition is defined as a State's permission for the foreign judgment⁷⁷ to have legal effects on the territory of that State.⁷⁸ Enforcement (in the context of the private international law) is defined as State's recognition and acceptance of the judgment as an enforcement title document and not its enforcement (in the sense of forced performance or compliance).⁷⁹ The latter notion has been discussed by the courts, and the Civil Division of the Supreme Court of Croatia has adopted a conclusion that the decree on recognition and enforcement rendered pursuant to

⁷² See *Uvodni zakon za zakon o parničnom postupku*, Službeni list FNRJ 4/57.

⁷³ *Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*, Službeni list SFRJ 43/1982 and 72/1982.

⁷⁴ Narodne novine 53/1991.

⁷⁵ *Zakon o međunarodnom privatnom pravu*, Narodne novine 11/2017. See the first comment in Mirela, Župan, novi hrvatski Zakon o međunarodnom privatnom pravu, *Hrvatska pravna revija* (18-2/2018) 1-12.

⁷⁶ Mihajlo Dika, O pojmu priznanja stranih sudskih odluka po jugoslavenskom internom pravu, *Privreda i pravo* (29-11&12/1987), 600-611, 601.

⁷⁷ On the notion of foreign judgment see Ivo Grbin, *Priznanje i izvršenje odluka stranih sudova* (Zagreb, 1980); Ivo Grbin, Strana odluka kao predmet priznanja i izvršenja po pravu Republike Hrvatske, *Informator* (4133, 16.10.1993) 5-6; 28; Vesna Tomljenović, Kako kvalificirati pojam strane sudske odluke?, *Zbornik Pravnog fakulteta u Rijeci* (7/1986) 171-191.

⁷⁸ Ivo Grbin, *Priznanje i izvršenje odluka stranih sudova* (Zagreb, 1980) 2; Ivo Grbin, *Priznanje i izvršenje stranih sudskih odluka*, *Zakonitost* (46-4/1992) 620-632, 620; Mihajlo Dika, in: Mihajlo Dika/Gašo Knežević/Srdan Stojanović, *Komentar Zakona o međunarodnom privatnom pravu*, (Beograd: Nomos, 1991), 279.

⁷⁹ Ivo Grbin, *Priznanje i izvršenje stranih sudskih odluka*, *Zakonitost* (46-4/1992) 620-632, 621.

Art. 101(3) in relation to Art. 96(2) of the ZRSZ, the foreign judgment or arbitration award is recognised and its enforceability is established, but this does not mean that its forced execution is ordered.⁸⁰ This is confirmed by the wording of the new Art. 73 of the ZMPP which states that "provisions of this title of the Act apply *mutatis mutandis* to declaration of enforceability (*proglašenje ovršnosti*) of foreign judgments".

The result of recognition is that the foreign judgment is made equal to a domestic one and produces legal effects in Croatia.⁸¹ Scholarly opinions state that the any foreign judgment to be enforced has to first be recognised, while not every foreign judgment that is recognised will necessarily be enforced.⁸²

2.3. Main features of 'delibation' (*procedura di delibazione*) or 'incidenter' procedure – type of procedure. Which type of procedure is provided for in your system? Accompany the answer with commentary.

Comment: *On the continent usually two distinct civil procedures exist. One is a separate non-contentious civil procedure especially tailored for recognition and enforcement of foreign judgements in Italy called 'procedura di delibazione'. However, in certain countries a possibility also exist that the foreign judgement is recognised and enforced directly within the procedure of enforcement (in the meaning of the execution) (in France called 'incidenter' procedure).*

In the Croatian legal system, there exists a separate non-contentious civil procedure especially tailored for recognition and enforcement of foreign judgements, which is often termed as delibation procedure.⁸³ However, it is also possible that a judgment is recognised directly within the enforcement proceedings, where the issue of recognition constitutes an incidental question having effect only in these proceedings.⁸⁴ In practice, however, one may also find the court decisions in the enforcement proceedings which in the operative part contain both the recognition of the foreign judgment (which as such would appear to have an *erga omnes* effect) and the enforcement order.⁸⁵

2.4. Jurisdiction in matters of recognition and enforcement (substantive and territorial). Provide a short description.

Courts in Croatia are competent to decide on recognition and enforcement of foreign judgments.

Territorial jurisdiction is regulated under the ZRSZ and ZMPP. ZRSZ provides that recognition or enforcement fall under the jurisdiction of the court in the territory of which the

⁸⁰ Zaključak Građanskog odjela Vrhovnog suda Hratke, 25.02.1985, cited in Mihajlo Dika, in: Mihajlo Dika/Gašo Knežević/Srđan Stojanović, Komentar Zakona o međunarodnom privatnom pravu, (Beograd: Nomos, 1991), 278.

⁸¹ Art. 86 of the ZRSZ and Art. 66 of the ZMPP.

⁸² Đuro Vuković, Priznanje i izvršenje stranih sudskih i drugih odluka koje su sa njima izjednačene (Glas: Banja Luka, 1986) 3.

⁸³ Mihajlo Dika, in: Mihajlo Dika/Gašo Knežević/Srđan Stojanović, Komentar Zakona o međunarodnom privatnom pravu, (Beograd: Nomos, 1991), 339.

⁸⁴ Art. 101(5) of the ZRSZ.

⁸⁵ *Trgovački sud u Rijeci*, decree in case Ovr-1340/2000, 6 November 2000. It is interesting that in the reasoning the judge states that the decision on recognition to enable deciding on the application for enforcement.

proceedings for recognition or enforcement are to be carried out.⁸⁶ More unambiguously, the ZMPP provides that recognition or enforcement is within the competence of the court on the territory of which the party against whom the recognition or enforcement is sought has his or her domicile or where the enforcement is to be carried out.⁸⁷ Furthermore, if that party is not domiciled in Croatia or enforcement is not to be carried out in Croatia, the application may be submitted to any of the courts having substantive jurisdiction.⁸⁸

Substantive jurisdiction is allocated in the CPA and the Courts Act (CA).⁸⁹ The general jurisdiction for recognition and enforcement of foreign judgments lies with the municipal courts (courts of general jurisdiction),⁹⁰ while recognition and enforcement of judgments in commercial matters is entrusted to commercial courts and the High Commercial Court decides on the appeal.⁹¹

2.5. Type of decision. Explain types of procedure and types of decision in your member state? Highlight any possible atypical procedures/decisions and their effects.

Decision rendered in the proceedings for recognition of the foreign judgment is a decree (*rješenje*).⁹² The discussion in the literature on the declaratory or condemnatory nature of this decree is not resolved.⁹³ This decree may be subject to an appeal on the issues of law or fact to be decided by the second instance court.⁹⁴ The possibility to challenge the second instance decision by means of an extraordinary remedy (*revizija*) are very limited.⁹⁵

⁸⁶ Art. 101(1) of the ZRSZ

⁸⁷ This is a further reference to the EA.

⁸⁸ Art. 72(1) of the ZMPP.

⁸⁹ *Zakon o sudovima*, Narodne novine 28/2013, 33/2015, 82/2015 and 82/2016.

⁹⁰ Art. 18 (1)(3) of the CA and Art. 34a(1)(3) of the CPA.

⁹¹ Arts. 21(1)(5) and 24(1)(1) of the CA.

⁹² See Art. 101(3) of the ZRSZ and Art. 72(2) of the ZMPP. On the decree see in details Arts. 343-347 of the CPA.

⁹³ Mihajlo Dika, O pojmu priznanja stranih sudskih odluka po jugoslavenskom internom pravu, *Privreda i pravo* 29-11&12 (1987), 600-611, especially 601-603.

⁹⁴ Art. 101(2) and (3) of the ZRSZ and Art. 72(2) of the ZMPP. On the appeal against the decree see in details Art. 378-381 of the CPA.

⁹⁵ Art. 382 of the CPA.

3. Recognition and Enforcement in B IA

3.1. Certification or declaration of enforceability in Member States of origin (Art. 53. B IA).

Art. 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.

3.1.1. Requirements. Provide a critical assessment on the requirements regarding the certification.

There is no provision in Croatian national law which would specially deal with the issue of the requirements for issuing a certificate under Art. 53 of the B IA, including its part on enforceability. To the extent that matters are not dealt with the B IA but left to the national laws of the Member State of origin, the requirements are explained above in 1.

3.1.2. Does a specific legal remedy exist to challenge the certificate of enforceability in the Member State of origin? If yes, how does it influence the course of civil enforcement?

Where the certificate of enforceability is issued by the Croatian court, as the court of origin, pursuant to Art. 53 of the B IA, the Croatian law needs to fill in the legal gap existing in the EU law with regard to the legal remedy to challenge this certificate. The reference can be made to Art. 36 of the EA which concerns the certificate of enforceability (*potvrda o ovršnosti*) issued on the bases of EA.⁹⁶ Nevertheless, its wording by no means excludes the certificates of enforceability issued in the form prescribed by the B IA. The provision of Art. 36(3) of the EA states that, in the event the conditions laid down by law for issuing a certificate of enforceability were not fulfilled, such certificate shall be withdrawn by the same court or body which issued it, either acting on a party's motion or *ex officio*. In addition to the proceedings for withdrawal of the certificate which are conducted outside the execution proceedings before the court which issued it, the debtor may raise this issue as an appeal ground in the enforcement procedure, which will have an effect of rejecting the motion for enforcement.⁹⁷

Notarial acts are subject to a special regime. According to Art. 36(5) of the EA, the Notaries themselves issue the certificates of enforceability regarding documents they draw and certify (notarial certificate of enforceability). Deciding on the legal remedy available to the execution debtor to challenge the notarial certificate of enforceability, the court before which the enforcement proceedings are taking place will review whether conditions for issuing such a certificate were fulfilled, taking into account also the statements of persons authorised based on the document to confirm the circumstances on which the this quality depends. If the court establishes that conditions for issuing a notarial certificate of enforceability were not fulfilled, the certificate shall be withdrawn by means of its ruling in the enforcement proceedings. This may be done within or outside the enforcement proceedings. In the former case, the withdrawal is within the powers of the enforcement court, which issues a decree withdrawing the certificate and rejecting the motion for enforcement. In the latter case, pursuant to Art.

⁹⁶ Under domestic law (Art. 36(2) of the EA), the certificate of enforceability is issued by the court of body which decided the case in the first degree.

⁹⁷ See Mihajlo Dika, *Građansko ovršno pravo*, Knjiga 1, *Opće građansko ovršno pravo*, (Zagreb: Narodne novine, 2007), 320.

36(6) of the EA, the competence to decide on the motion for withdrawal of the notarial certificate of enforceability belongs to the municipal court in whose area the registered office of the Notary Public is located. This is done in the *ex parte* proceedings.

3.1.3. What happens if the court of the Member State of origin certifies the enforceability for a judgment which has not yet acquired this effect (e.g. in Slovenia the time limit for voluntary fulfilment of the claim in the legally binding judgment (a prerequisite for enforceability) has not yet expired)? Can the court thereafter repeal the certificate? In connection: What happens if the judgment was served to the wrong address or to the wrong person? Does this constitute a ground for withdrawal of certificate of enforceability in the Member State of origin?

If the time limit for the voluntary fulfilment of the claim has not expired, the judgment is not enforceable under Croatian law. Art. 25 of the EA states that a court decision ordering the fulfilment of a claim on payment or performance is enforceable if it has become unappealable and if the period for voluntary fulfilment has expired. The term for voluntary fulfilment runs from the date of delivery of the decision to the enforcement debtor, unless provided otherwise by law. Therefore, the Croatian judgments should not be certified as enforceable before the expiry of this period, and if they mistakenly are, this constitutes a ground on which the certificate of enforceability may be challenged in the above described procedure under Art. 36 of the EA before the court which issued the certificate, or within the enforcement procedure by submitting an appeal against the writ of execution. The same is true in cases in which a judgment was served to the wrong address or the wrong person, because this would constitute reason due to which enforceability could not occur. Namely, unappealability effect is conditioned upon the service of the decision to the debtor.⁹⁸

In regard to the trustworthy documents, among the conditions for enforcement there is also matured debt in respect to which enforcement is sought.⁹⁹

3.1.4. B IA does not provide, neither for withdrawal of certificate nor for a certificate of non-enforceability. How would the domestic court thereafter deal with unlawfully issued certificates due to deficiencies of requisites (e.g. certificates issued where the claim has not yet actually acquired the attribute of enforceability; where the judgment was served to the wrong person etc.)?

Comment: In addition to certificate of enforceability, the Regulation does not include any provisions related to rectification or withdrawal of certificate (cf. Art. 10 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims). This issue is therefore governed by domestic law in the Member state of origin. Moreover, certificate of non-enforceability unfortunately does not exist (Art. 6(2) Reg. 805/2004), which could ease termination or suspension of enforcement procedure in Member State of enforcement in cases where a judgement has ceased to be enforceable or its enforceability has been suspended or limited. Is it a technical matter that can be handled by the clerk?

⁹⁸ Arts. 333 and 335 of the CPA.

⁹⁹ See Art. 31 of the EA.

As explained above, in case of non-fulfillment of conditions prescribed by law on which enforceability depends, there is an option for the enforcement debtor to appeal in the enforcement procedure or instigate the separate proceeding for withdrawal of the certificate.¹⁰⁰ In all these cases, it is always the enforcement court which makes the decision, not clerks such as in some other Member States. For instance, if the enforcement title document (such as a court judgment from another Member State falling under the B IA) was repealed, annulled, altered or otherwise put out of force, this constitutes the appeal ground and if successfully raised will result in rejection of the motion for enforcement.

3.1.5. What are the effects of the certificate in your legal order in the Member State of origin (e.g. Germany – ‘*Klausel*’)? Comment on the type of procedure/decision and the effects it produces.

One way of viewing the certificate issued under the B IA is that it has no legally binding effect and serves the purpose of simplifying the free circulation of judgments in the EU. Nevertheless, the section 4.4. in the Annex I addresses the issue of the enforceability and its content actually demands from the court of the Member State of origin to state all the information about this as it would state in the national certificate of enforceability. Furthermore, this document is signed and stamped by the court, after the judge has filled it in (at least this is the procedure in Croatian courts). Finally, this is the document based on which, pursuant to B IA, the court of the requested Member State decides whether or not to proceed with the enforcement, not being entitled to ask for any additional document certifying the enforcement.¹⁰¹ Having this in mind, it seems that the section 4.4. in the Annex I could have the same effect as the certificate of enforceability within the meaning of Art. 36 of the EA.

3.1.6. Control and Correction. What options are available for challenging errors?

In the absence of the EU or special Croatian provisions on the issue, it is not certain what the Croatian court would do in such a situation. It would probably depend on the type of error. One possible solution would be to apply *mutatis mutandis* provisions which apply to correction of the judgment (and decree), whereby it is provided that in case of errors, correction will be done by rendering an additional decree which is added in the end of the corrected judgment and served to the parties.¹⁰² Another option is to carry out the control and correction pursuant to the EA in Art. 36(3), (5) and (6) which have been identified as potential gap-fillers in case of challenging the certificate of enforceability in the Member State of origin.¹⁰³

3.1.7. Plurality of certificated documents (number of copies of certificate). Provide a comment on said subject and possible problems which may stem from it.

There is no provision on the number of certificates to be issued in Croatian law and nothing seems to restrict this number. Thus if a party needs more than an original certificate, he or she may request so and the copies thereof will be provided by the court. However, there is a rule

¹⁰⁰ See 3.1.2.

¹⁰¹ See Art.42 of the B IA on the documents that have to be provided by the applicant for the purpose of enforcement. In some cases, also the translation or transliteration of the judgment might be necessary (Arts. 42(3) and 57 of the B IA).

¹⁰² Art. 342 of the CPA.

¹⁰³ See 3.1.2.

in the Court Fees Act (CFA)¹⁰⁴ which says that the fee is paid for every court copy when requested.¹⁰⁵

3.1.8. Legal nature of the certificate of enforceability. The relation between B IA and national rules. Please comment on possible discrepancies and similarities.

As it was already indicated, there seems to be grounds for asserting that the certificate from Art. 35 of the B IA has a binding effect in the same way in which certification of enforceability under Art. 36 of the EA has such effect.¹⁰⁶ In addition to the above supporting arguments concerning similarity between the two, it is also important to note that the certificate from Art. 35 of the B IA may be requested instead of the certification of enforceability under Art. 36 of the EA, so that it may happen that the latter is never issued. This may occur frequently because the intention of the creditor is to attempt enforcement only in another Member State. Therefore, issuing the certificate from Art. 35 of the B IA is completely independent from issuing the certification of enforceability under Art. 36 of the EA, but runs parallel to it, as a fast track when it comes to inter-Member State enforcement. Hence, it might be reasonable to treat them, including in terms of their legal nature, in the similar, if not the same, way.

3.1.9. *Post festum* cancelation or withdrawal of certificate of enforceability in Member State of origin. How should such an event be treated and what effects, if any, are to be ascribed to it?

In the absence of any rules in the B IA, the national rules in EA apply. If the certificate of enforceability is repealed, as a rule, enforcement is suspended *ex officio*. The same happens if the enforcement title document is repealed, altered, nullified or no longer in force pursuant to a binding decision or has no effect as otherwise established.¹⁰⁷

3.1.10. Does the certificate need to be served to the defendant at all? Does it have to be served within a specific timeframe? Note that these questions refer to the Member State of origin.

There is no requirement under Croatian law to serve the certificate of enforceability to the defendant.

3.1.11. Service of declaration of enforceability, if it is foreseen in the national law. How is the service conducted? Describe the conditions for and methods of service.

There is no requirement under Croatian law to serve the declaration of enforceability to the defendant.

3.1.12. Although Art. 40 of the B IA enables the creditor to apply for any protective measures which exist under the law of the Member State addressed prior to the first enforcement

¹⁰⁴ *Zakon o sudskim pristojbama*, Narodne novine 74/1995, 57/1996, 137/2002, 26/2003, 125/2011, 112/2012, 157/2013 and 110/2015.

¹⁰⁵ Art. 4 in relation to Arts. 2 and 3. of the CFA. For the amount of the fees, see Tariff No. 9 concerning the documents for the use abroad.

¹⁰⁶ See 3.1.5.

¹⁰⁷ Art. 72(1) of the EA

measure, this interim step requires additional costs and can cause delays. Please provide a critical assessment.

“Art. 40

An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.”

Comment: *One of the major concerns which relates to certificate of enforceability (Art. 53). According to Art. 43 (1) where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Art. 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. Mentioned provision does not sufficiently take into account the surprise effect of enforcement. Seizure or attachment of debtor's property is usually the first enforcement measure, which freezes debtor's property and precludes debtor's to dispose with its assets. If the certificate of enforceability is served on the debtor prior to the first enforcement measure, there is no surprise effect of enforcement. What is more, in that way the court even warns the debtor that creditor attempts to attach his assets and debtor can dispose of his assets and prevent the recovery of debts.*

The court of the MS of the enforcement has to make sure that the certificate is served on the defendant prior to the first enforcement measure.¹⁰⁸ The reason for serving the defendant is to inform the debtor of the enforcement in another Member State.¹⁰⁹ Nevertheless, this provision potentially creates situation which differs from the one that would orderly take place in the Member State of enforcement in a case not captured by the B IA. It may have an adverse effect on the enforcement efficiency due to the fact that the debtor may dispose or hide his assets having been timely warned about the forthcoming enforcement. The exception concerns the judgment which contains a protective measure.¹¹⁰

Pursuant to the EA, interim measures may be applied for prior to commencement of or during the enforcement proceedings and after these proceedings end, until the enforcement is completed.¹¹¹ The High Commercial Court has confirmed that an interim measure may be awarded prior to the commencement of the enforcement proceedings or during these proceedings. However, if the purpose intended by the requested interim measure may be achieved by the means of enforcement, the interim measure will not be awarded. The court reasoned that the enforcement is stronger means for achieving security than a provisional measure.¹¹²

3.1.13. Certifying the amount of interests. Provide a comment on possible problems and solutions.

Comment: *Regarding the enforcement of interests, the certificate of enforceability does not contain easily discernable data where a judgment*

¹⁰⁸ Art. 43(1) of the B IA.

¹⁰⁹ Rec. 32 of the B IA.

¹¹⁰ Art. 43(3) of the B IA.

¹¹¹ Art. 341(1) of the EA.

¹¹² *Visoki trgovački sud Republike Hrvatske*, decision of 22 May 2001, Pž-2547/01, Zbornik odluka 94-04, cited in: Gabrijela Mihelčić, *Komentar Ovršng zakona*, Organizator, (Zagreb: Organizator, 2015), 1019.

refers to statutory interests which are calculated in accordance with (most commonly) domestic law of the Member state of origin (e.g. Point 5.2.1.5.2.1 of certificate). In some member states, the interest rate of (default) interests is determined by statute and changes from time to time (e.g. Slovenia every 6 months). If an enforcement agent in Slovenia (Member State of enforcement) has to enforce a foreign judgment, in terms of speedy (efficient) procedure, he is not interested in the foreign (for example Italian) statute governing the interest rate. On the contrary, the enforcement agent is interest in the exact amount of interests or - at the very least - a precise calculation formula to calculate them. In that regard, Points 5.2.1.2. and 5.2.1.3. contained in the certificate under Regulation (EC) No 805/2004 are much more suitable for these purposes, because they enable the enforcement authority in the Member State of enforcement to calculate the amount of interests very easily. Replacing Annex of Brussels I Recast with a new, more detailed Annex would be very appropriate.

Pursuant to the Obligations Act (OA),¹¹³ a debtor who delays payment is due to pay the default interests as well.¹¹⁴ The statutory default interests are calculated every six months and thus subject to changes over time. With this in mind, the EA provides that if after a decision is adopted, settlement reached or a notarial deed drawn, the rate of default interest changes, upon the any party's request the court will issue a ruling ordering the payment of default interest at the changed rate for the time period with respect to which the change relates. The request for adopting such a ruling may be filed any time prior to the termination of the enforcement proceedings.¹¹⁵ If the payment of default interest on the awarded costs of proceedings is not specified in the enforcement title document, the court will order the payment of such interest in the writ of execution, upon the request of the creditor, at the rate prescribed from the date of adopting the decision or concluding the settlement to the date of payment.¹¹⁶ Upon the request of the creditor, the court will order payment of default interest on the costs of the enforcement proceedings or the interim proceedings at the rate prescribed from the date on which the costs were incurred or paid to the date of payment.¹¹⁷ There are also special rules for amounts due to employees and for the proceedings before FINA.¹¹⁸

The questions may arise as to the amount of interests stated in the certificate issued under Article 53 of the B IA. First, if the court of a foreign Member State as the court of the Member State of origin issues this certificate, how should the Croatian court as the court of enforcement proceed when interest rate has been changed? Should it rely on the above rules of the EA and apply foreign law to amend the certificate to the extent the change in the interest rate requires so? The answer should be negative because the certificate, as it is now, may be issued, and also corrected, supplemented or otherwise changed, only by the court of the Member State of origin. Therefore, the applicant in the enforcement proceedings should be able to request changes to the certificate to be made before the court of the Member State of origin.

¹¹³ *Zakon o obveznim odnosima*, Narodne novine 35/2005, 41/2008, 125/2011, 78/2015 and 29/2018.,

¹¹⁴ Art. 29(1) of the OA.

¹¹⁵ Art. 30(1) of the EA.

¹¹⁶ Art. 30(2) of the EA.

¹¹⁷ Art. 30(3) of the EA.

¹¹⁸ Arts. 30(4) and (5) of the EA.

The second question that may arise as to the amount of interests stated in the certificate is when the certificate is issued by the Croatian court as the court of the Member State of origin. How should the Croatian court proceed in this situation? This might be the situation which is equivalent to that of correction of the certificate.¹¹⁹

3.1.14. How does party succession affect the content of the certificate and the overall procedure?

The rules related to party succession in the enforcement proceedings have been dealt with under 1.14. The part of this discussion is relevant also for the purpose, and in particular the part which relates to the CPA. Again the situation may differ from the perspective of the court of the Member State of origin and the court of the Member State of enforcement, when it comes to the changes in the certificate. Should the court of the Member State of origin change the certificate to reflect the succession or not? It seems reasonable not to do that since the judgment which is certified has already been rendered and it mentions the predecessor rather than the successor in title. It would be more consistent if the other judgment (or document) proving the succession in title is equipped to be relied on in the Member State of enforcement so that the court there could apply its own law in relation to the succession before or in the course of the enforcement proceedings.

3.2. Recognition and enforcement in member state of enforcement.

3.2.1. The concept of 'recognition' (Art. 36/1). Provide your understanding.

"Art. 36

- 1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required."*

A judgment rendered by a Member State court automatically produces effects in other Member States. According to the Jenard's Report, this means that the recognition must have "the result of conferring on judgments the authority and effectiveness accorded to them in the State in which they were given" (C 59/28). As for the scope of these effects, the CJEU established in *Hoffmann v Krieg*¹²⁰ that a foreign judgment "must in principle have the same effects in the state in which enforcement is sought as it does in the state in which judgment was given", even if this means that the judgment will produce effects which are foreign to the Member State of the enforcement.¹²¹ Furthermore, this effect covers not only the operative part of the judgment, but its grounds, as well.¹²² The limits of this foreign judgment's effect are set by public policy of the Member State of the enforcement.¹²³

¹¹⁹ See 3.16.

¹²⁰ CJEU, C-145/86, EU:C:1988:61.

¹²¹ Sikirić, Hrvoje, Priznanje sudskih odluka prema Uredbi Vijeća (EZ) br. 44/2001 od 22. prosinca 2000. o sudskoj nadležnosti i priznanju i ovrši odluka u građanskim i trgovačkim predmetima, *Zbornik Pravnog fakulteta u Zagrebu*, 62-1-2 (2012) 289-330, especially 294.

¹²² CJEU, *Gothaer*, C-456/11, EU:C:2012:719.

¹²³ CJEU, *Krombach v Bamberski*, C-7/98, EU:C:2000:164.

3.2.2. The scope of a judgement's authority and effectiveness. Do you see any national (problematic) issues considering the doctrine of spreading the effects of a judgment from the Member State of origin to the Member State of enforcement?

Croatian private international law system in Art. 86 of the ZRSZ provides that a foreign decision becomes equal to the decision of the Croatian court and has legal effect in Croatia only if it has been recognised by the Croatian court. According to the commentators, this means that legal effects of the decision are governed by the state of recognition and not the state of enforcement.¹²⁴ The wording is kept in the provision of Art. 66 of the ZMPP. Because of this, it would not be surprising that Croatian courts approach with reluctance to recognition of legal effects of a foreign judgment, which are unknown to Croatian legal system. However, there has been no such situation yet brought to attention of the author of this report.

3.2.2. Having in mind Art 43/1, is it possible to begin with the first enforcement measure and limit the enforcement proceedings to protective measures, when the certificate issued pursuant to Art. 53 has not been served on the defendant (debtor) yet? Should this matter be clarified by the CJEU?

"Art. 43

- 1. Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Art. 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person."*

"Art. 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I."

Comment: In some jurisdictions (e.g. Slovenia and Austria) the first enforcement measure and protective measure overlap. For instance, when enforcing debtor's movable property, the first enforcement measure is seizure of certain movables (e.g. vehicle). Seizure of a certain movable is a protective measure. The following problem may therefore come to fruition: taking into account Art 43/1; may a protective measure which, in certain member states overlaps and is considered as the initial step in enforcement procedures, be regarded as a 'first enforcement measure', thus requiring the service of the certification and thereby stripping the protective measure of self-standing effect?

Declaration of enforceability is now issued in the Member State of origin and is compared to declaration of enforceability according to Art. 38 of B I (44/2001), which was issued in Member State of enforcement.

Where enforcement is sought of a judgement given in another Member State, the certificate issued pursuant to Art. 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43/1). That is why for the debtor it is crucial that declaration of enforceability is served to him prior to the beginning of enforcement. This is the German solution. The Slovenian and Austrian solution differs – declaration of enforceability is not ex officio served to debtor. That is why a creditor with an

¹²⁴ Mihajlo Dika, in: Mihajlo Dika/Gašo Knežević/Srdan Stojanović, Komentar Zakona o međunarodnom privatnom pravu, (Beograd: Nomos, 1991), 279.

Austrian or Slovenian enforceable title can only apply for protective measures according to Art. 40 (in Slovenia predhodne odredbe, in Austria Exekution zur Sicherstellung according to par. 373 EO).

Could this be ground for preliminary ruling for the Court of Justice of the EU? (e.g. 'Is a national law, such as the one in the case at hand, where a self-standing protective measure overlaps with a first measure of enforcement, compatible with the Regulation').

A situation similar to the one described above might arise under Croatian law as well. Preliminary measure may be awarded during the enforcement proceedings. For instance, both Art. 345(1) of the EA on securing monetary claims and Art. 347(1) of the EA on securing non-monetary claims list a measure prohibiting alienation and encumbrance of moveables against which the claim is directed, provide for their seizure and their entrusting to the applicant or a third party. Besides, Art. 342(1) of the EA states that the court shall, at the request of the applicant and if this is necessary due to the type of measure and purpose to be achieved by it, in a ruling ordering a preliminary measure, also order the means by which it will be carried out by use of coercion and the object of security, applying *mutatis mutandis* the rules on determining the means and the object of security in a writ of execution. In Art. 342(3) of the EA it is further provided that rulings ordering preliminary measures have the authority of the writ of execution. This example shows that the enforcement measure may be taken at the same time as the preliminary measure. For the reasons elaborated in the comment to the questions, the clarification from the CJEU might be welcome.

3.2.3. A key question is whether the certificate on standard form B IA was served before commencing enforcement. Comment.

Comment: *Standard form does not allow and does not have a rubric that certificate was served. It is very convenient for the creditor that the service is done in the Member State of origin, not in Member State of enforcement.*

The serving of the standard form requires further clarification as to the point in time at which the certificate must actually be served under the B IA. Serving the debtor in the Member State of enforcement may have an adverse effect on efficiency of enforcement, i.e. it might diminish the surprise effect over the debtor and provide him or her with the period in which assets might be transferred or hidden. This seems particularly problematic in cases of *ex parte* enforcement. Yet, serving the certificate only couple of minutes ahead of the enforcement would not have such a detrimental effect over the efficiency of the ordered enforcement. It is, nevertheless, difficult to imagine that the obligation to serve the debtor with the certificate in the B IA would be intended as a mere formal requirement to be carried out at any time (including immediately before the enforcement) because that would devoid the service of its true purpose – the opportunity for debtor to challenge the certificate. This is further corroborated by the fact that the next provision speaks of the possibility that the respective judgment which has not been priorly served to the debtor, should be served along with the certificate.

According to Croatian law, there is no obligation to serve the debtor with the certificate of enforceability. All the more in certain situations also the service of the enforcement order is delayed to the point when (not before) the first enforcement measure is taken. This is the case

where the enforcement order based on enforcement title document is directed against movables. In those instances, the debtor is served with the enforcement order only when the first enforcement measure is taken.¹²⁵ It may also happen that under Croatian law the debtor never learns of the request for enforcement (or the preceding certificate of enforceability) if it has been dismissed or rejected prior to the stage in which debtor would respond to it.¹²⁶

3.2.5. Although the *ex-ante* exequatur has been abolished, the challenge stage is retained as a result of negotiations. How is the residual stage regulated in your member state? How does your system enable the debtor to invoke a challenge? What kind of procedural instruments are at his disposal?

Comment: By initiating a procedure in accordance with the national law of the Member State (of enforcement) the grounds for refusal of enforcement listed in Art 45 can be invoked by any interested party. However, the particularities are scarce and much is left desired – seeking introspective into national law.

See 4.1. and 4.2.

¹²⁵ Art. 45(5) of the EA. However, as per Art. 45(6) of the EA, in cases of enforcement ordered on the basis of trustworthy documents, the debtor is always served with the decree prior to enforcement.

¹²⁶ Art. 45(2) of the EA.

4. Remedies

4.1. General observations on the systemization and availability of national remedies. Provide a short explanation of legal remedies in the national civil procedure of your member state. How is your domestic system of legal remedies structured (e.g. a division between ordinary and extraordinary remedies)?

In Croatian legal system there are two basic categories of remedies: ordinary and extraordinary. Ordinary legal remedies, among which the central one is appeal (*žalba*)¹²⁷ are available against judgments and other decisions, with some narrow exceptions) from the time they are rendered until the set period of time expires and the judgment or another decision become unappealable (final).¹²⁸ Following that, extraordinary remedies may be submitted to the court: motion for review (*revizija*)¹²⁹ and motion for retrial (*prijedlog za ponavljanje postupka*).¹³⁰ The former is limited only to the so-called extraordinary review which may be submitted where the unified application of law related to a substantive or procedural issue is at stake, and the deciding *in concreto* involves that issue.¹³¹ The latter is limited only to situations in which the debtor did not object to the part of the writ of execution based on trustworthy document ordering the payment of the claim.¹³² There is also an option of motion for *restitutio in integrum* (*prijedlog za povrat u prijašnje stanje*).¹³³

4.2. Remedies in enforcement procedure.

4.2.1. Provide a concise description of all the remedies (and other recourse, i.e. separate enforcement claims) available throughout the enforcement procedure (and separate/adjacent procedures), for all involved persons. Therein, specify the requirements for each remedy.

Legal remedies in enforcement proceedings include: legal remedies against writs of execution based on enforcement title documents (Arts. 50-56 of the EA), legal remedies against writs of execution based on trustworthy documents (Arts. 57-58 of the EA), objections by third parties (Arts. 59-61 EA), counter-enforcement (Arts. 62-64 of the EA) and deferment, suspension and completion of enforcement (Arts. 65-73 of the EA).

4.2.2. Characteristics of legal remedies in enforcement procedure. Remedies differ in effect and the way in which they exert that effect. Herein focus on the nature and attributes of different remedies in your system, e.g. does invoking a certain remedy suspend the proceedings for the time being; which body/authority is equipped with the competence

¹²⁷ See Arts. 348 et seq. of the CPA.

¹²⁸ See Art. 333 of the CPA.

¹²⁹ Arts. 382 et seq. of the CPA.

¹³⁰ Arts. 421 et seq. of the CPA. There is also a special regime for conducting the proceedings anew in case of a decision by the European Court of Human Rights concerning the violation of a human right or freedom. See Arts. 428a et seq.

¹³¹ Art. 12 of the EA. It has been commented that the extremely limited option to motion for review in enforcement cases has led to "feudalisation" of enforcement proceedings, i.e. different case law in the areas where different county courts have jurisdiction. Eduard Kunštek, Dejan Bodul, Parnice radi proglašenja ovrhe nedopuštenom – problem pravne prirode rokova za njihovo pokretanje, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 29 1 (2008), 317-334, accessible at <https://hrcak.srce.hr/file/39995> (last visited on 17 May 2018), especially 319.

¹³² Art. 12(1) in conjunction with Art. 58(7) of the EA.

¹³³ Art. 117 et seq. of the CPA.

on rendering a decision in remedial procedures (hierarchy of competence); is a given remedy unilateral or bilateral (does the opposing party have the option of supplying an answer); what powers does the appellate body/authority have, e.g. cassation.

A debtor may file an appeal against the writ of execution based on enforcement title documents¹³⁴ on following grounds under Art. 50 of the EA: 1. lack of enforcement title; 2. lack of enforceability; 3. enforcement title document was repealed, nullified, altered or otherwise placed out of force, or has lost its efficiency or if it has no effect; 4. the parties have agreed in an official document or a document legalised by a Notary Public that the creditor shall not seek enforcement (*pactum de non exequendo*); 5. if the period to apply for enforcement has expired; 6. the object is exempted from enforcement, or it is the object on which enforcement is limited; 7. creditor is not entitled to seek enforcement on the basis of an enforcement title document or against the debtor; 8. condition determined in the enforcement title document is not fulfilled; 9. the claim has ceased; 10. the realisation of the claim is postponed, prohibited, altered or in some other way prevented on the basis of a fact that came about at a time when the debtor could no longer make it known in the proceedings in which the decision was rendered or after the conclusion of a court or administrative settlement or the draft, confirmation or legalisation of a notarial deed; 11. the claim in the enforcement title document is time barred. These grounds are fourfold by their nature. First category relates to procedural irregularities in the course of the enforcement proceedings (under 6. above). Second concert the attributes of the document based on which the writ is issued (under 1. and 3. above). Third are the opposition grounds (under 2., 4., 5., 7. and 8. above). Fourth are the oppugnation grounds (under 9.-11. above).¹³⁵ In case of debtor's appeal, the courts must *ex officio* assess the grounds stated in points 1., 3., 5. and 6. (for *res extra commercio* and claims arising out of taxes and other duties), as well as erroneous application of substantive law and serious violations of the enforcement procedure. The appeal may also challenge the subject matter and territorial jurisdiction of the enforcement court. Appeal may be submitted 15 days from the receipt of the writ of execution,¹³⁶ the EA permits late appeals until the completion of the enforcement, if the debtor for justified reasons could not have had appealed in time. Such late appeal may only be based on grounds under 7., 9., 10. or 11. above.¹³⁷

The debtor's appeal does not suspend writ of execution,¹³⁸ but may serve as grounds for the deferring the enforcement.¹³⁹ The appeal is both remonstrative and devolutive remedy. When adjudicating on the appeal, the first instance court must dismiss the appeal or within 30 days uphold the appeal and alter the writ of execution either fully or partially and reject the motion for enforcement, or repeal the writ of execution and dismiss the motion for enforcement or declare that it does not have subject-matter or territorial jurisdiction and assign the case to the competent court. If the first instance court finds the appeal unfounded, it will forward the case to the second instance court within 30 days. The latter should decide within 60 days.¹⁴⁰ If the appeal is based on grounds under 7. or 9.-11. above, the first instance court must deliver the appeal to the creditor, so that he or she may respond within 8 days. If the creditor acknowledges the existence of any reason for the appeal, the court shall suspend the

¹³⁴ Art. 11(1) of the EA.

¹³⁵ See details in Eduard Kunštek, Dejan Bodul, Parnice radi proglašenja ovrhe nedopuštenom – problem pravne prirode rokova za njihovo pokretanje, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 29 1 (2008), 317-334, especially 322-323.

¹³⁶ Art. 348(1) of the EA.

¹³⁷ Art. 53(1) and (2) of the EA.

¹³⁸ Art. 50(7) of the EA.

¹³⁹ Art. 65(1)(1) of the EA.

¹⁴⁰ Art. 51 of the EA.

enforcement. If the creditor disputes the existence of the reasons or does not respond within 8 days, the court of first instance shall render a ruling instructing the debtor to initiate proceedings, within 15 days from the legal effectiveness of the ruling, seeking that the enforcement is impermissible. The court shall not instruct the debtor to initiate litigation proceedings, but shall accept his or her appeal, revoke the performed actions and suspend the enforcement if he or she proves that the appeal is well-founded by an official document or a document legalised by a Notary Public, that is, if the facts on which his or her appeal is based are generally known or may be established by applying the rules on legal presumptions.¹⁴¹

The debtor may object to the writ of execution based on the trustworthy document¹⁴² within 8 days or 5 days in disputes on bills of exchange or cheques. Pursuant to Art. 57 of the EA, the objection contesting the writ of execution only in the part ordering enforcement, may be contested on the same grounds as in case of appeal against the writ of execution based on enforcement title document. Under Art. 58(3) of the EA, if the writ of execution is contested in its entirety or only in the part instructing the enforcement, the court which received the case from the Notary Public (who no longer has competence over the matter) shall place the writ of execution out of force in the part ordering enforcement and revoke any performed actions, and the proceedings shall be continued as in case of an objection against the payment order. According to Art. 58(4) of the EA, if the writ of execution is contested only in the part ordering enforcement, proceedings shall be continued as in case of an appeal against the writ of execution based on enforcement title document. If the debtor contests the writ of execution only in the part ordering the debtor to pay the claim, Article 58(6) of the EA provides that the court shall declare that the uncontested part of the writ of execution has become legally effective and enforceable and shall proceed with the enforcement only in the part declared legally effective. In respect to the contested part of the writ the court will proceed in a separate proceedings as explained above under Art 58(3) and (4).

Third party’s objection, often referred to as excisory, may be raised by any person claiming to have a right on the object of enforcement that prevents enforcement. That person may submit an objection against enforcement, requesting enforcement on the object to be declared impermissible under Article 59(1) of the EA. The objection may be filed at any time prior to termination of the enforcement proceedings. The objection does not suspend the enforcement as provided under Art 59(4) of the EA. This remedy is not available if the third party is the co-owner of the movable which is the object of enforcement. If the objection is proven on legally effective judgment or another official document or document legalised by a Notary Public, or on the facts which are generally known or may be established by applying the rules on legal presumptions, the court will decide on the objection in the enforcement proceedings pursuant to Art. 60(2) of the EA. If the creditor fails to respond on the third party’s objection within 8 days or if one of the parties opposes the objection, the court will instruct the third party to initiate litigation proceedings against the parties within fifteen days.¹⁴³

Counter-enforcement is a remedy according to which, after the enforcement is completed, in the same enforcement proceedings the debtor may request the court to order the creditor to return to him or her what he or she received as the result of the enforcement (except in *ex officio* enforcement proceedings).¹⁴⁴ The grounds for this counter-enforcement are the

¹⁴¹ Art. 52 of the EA.

¹⁴² Art. 11(2) of the EA.

¹⁴³ Art. 60(1) of the EA.

¹⁴⁴ Art. 62(1) of the EA.

following: 1. the enforcement title document is repealed, altered, annulled, placed out of force or otherwise without legal effect; 2. the creditor's claim was settled by the debtor outside the court simultaneously with the enforcement proceedings so it is settled twice; 3. the writ of execution is repealed and the motion for enforcement is dismissed or rejected, or the writ of execution was altered by a legally binding decision; 4. the enforcement carried out on a specific object of execution was declared impermissible. The motion for counter-enforcement must be filed within 3 months from becoming aware of the reason, but not later than 1 year from completing the enforcement proceedings.¹⁴⁵ There is a right to seek the resulting interests and damages but in the separate proceedings. The court decides after the hearing if the creditor contests the counter-enforcement within 8 days or, in the absence of the creditor's contestation, the court shall assess whether to decide on it without holding a hearing. If the motion is upheld, the creditor must return what he received in the enforcement proceedings within 15 days.¹⁴⁶

Deferment is a debtor's remedy to prevent irreparable damage or nearly irreparable damage or violence. The deferment may be full or partial. Grounds for deferment are the following: 1. legal remedy filed against the decision based on which enforcement was ordered; 2. motion for *restitutio in integrum* has been filed in the proceedings in which the decision was adopted based on which execution was ordered, or a motion for retrial; 3. an action to set aside the arbitration award on the basis of which the enforcement was ordered, has been submitted; 4. an action has been filed to have the settlement or a notarial deed serving as basis for enforcement, repealed, or an action to annul it; 5. the debtor has appealed or instituted the proceedings against the writ of execution; 6. the debtor appealed a ruling confirming the enforceability of the enforcement title document, or motioned for the retrial; 7. the debtor or a participant in the proceedings seeks rectification of irregularities during enforcement; 8. enforcement, according to the contents of the enforcement title document, depends on simultaneous fulfilment of an obligation by the creditor, and the debtor has refused to fulfil his obligation because the creditor has not fulfilled his obligation or shown any willingness to do so simultaneously; 9. if the Croatian Government declared a disaster and the a debtor on the day the disaster was declared had residence or registered office and professional activity on the territory of a declared disaster; 10. an *ex officio* criminal proceedings is pending concerning the claim which is being enforced.¹⁴⁷ This remedy may be conditioned by the provision of security upon creditor's motion. This remedy, if founded, defers the enforcement, except in the case of enforcement of a pecuniary claim, when the activities by which the creditor acquires statutory lien or the right to collect on the object of enforcement are nevertheless taken.¹⁴⁸ Creditor may also file for full or partial deferment, in which case if the enforcement has not commenced, it may be deferred only once for the time period established by court.¹⁴⁹ If a third party files the motion requesting execution on a specific object to be declared impermissible, the court shall defer execution with respect to such object if the person shows probability of his or her right and that as the result of enforcement he or she would suffer irreparable or nearly irreparable damages, provided that such third party initiates litigation proceedings as instructed and within the set period of time.¹⁵⁰ This remedy may be conditioned by the provision of security. The deferment will last until the proceedings on the

¹⁴⁵ Art. 60(5) of the EA.

¹⁴⁶ Art. 63 of the EA.

¹⁴⁷ Art. 65(1) of the EA.

¹⁴⁸ Art. 65 (5) and (6) of the EA.

¹⁴⁹ Art. 66 of the EA.

¹⁵⁰ Art. 67(1) of the EA.

legal remedy or instrument are completed if the debtor or the third party filed a legal remedy. If the creditor filed for the motion, the deferment may last no longer than 6 month.¹⁵¹

4.2.3. Should objections be brought up in enforcement or in separate procedure?

See 4.2.2.

4.3. Opposition in enforcement.

4.3.1. If a separate judicial procedure to enforce claims from judgements is not foreseen in your member state, what options does the debtor have in order to challenge inadmissibility of particular enforcement on the grounds that appeared (came into being) after the enforcement title was acquired (*nova producta*) or due to the inadmissible way of performing enforcement?

In Croatia, there are separate judicial proceedings to enforce a judgment, so this question is not applicable.

4.3.2. On which grounds does opposition against an enforcement decision have to be substantiated? In case no substantiation is required, does an 'assertion' of opposition suffice?

The grounds for opposition have been listed in 4.2.2. The appeal against the writ of execution based on enforcement title,¹⁵² as well as the objection against the writ of execution based on a trustworthy document,¹⁵³ must contain reasons.

4.3.3. Are the grounds for opposition to enforcement exhaustively listed or encompassed by a general clause or described in exemplary fashion? If a general clause is present, how is it formulated and what is its relation to exemplary listed grounds? Are the grounds subdivided into 'categories', e.g. Slovenian and to a certain extent Austrian theory incorporate an understanding of 'impugnation' and 'opposition' grounds; while the first refer to situations where a creditor possesses a valid enforcement title and an existent claim but cannot enforce it (due to a timely preclusion for instance), the latter refer to situations where the creditor holds a valid enforcement title, however a fact, which has arisen after the title attained the attribute of enforceability (see above *nova product*), prevents the enforcement (for instance due to the extinguishing of the claim because of compensation, voluntary fulfilment by the debtor etc.).

The grounds for opposition are exhaustively listed in EA (see 4.2.2. for the categories differentiated in scholarly writings) and there is no general clause.

¹⁵¹ Art. 70 of the EA.

¹⁵² Art. 350(3) of the EA.

¹⁵³ Art. 58 of the EA.

4.4. Remedies in international private procedure, i.e. remedies foreseen in national law, relating to recognition and enforcement of foreign judgments under private international law (cross-border situations), excluding B IA .

4.4.1. Types and main features of legal remedies.

In Croatian national private international law, the remedies for recognition and enforcement of foreign judgments are remedies otherwise available in the non-contentious proceedings,¹⁵⁴ meaning the appeal (*žalba*) challenging the decree (*rješenje*) on recognition or enforcement as an ordinary remedy.¹⁵⁵ Appeal may be submitted within 15 days from the receipt of the decree. Although the general rule in ZVP states that the appeal is remonstrative and devolutive remedy,¹⁵⁶ the ZRSZ provides that decision upon appeal is made by the second-instance court,¹⁵⁷ while the ZMPP does not provide anything which might be understood as return to the general system under the ZVP. It is allowed to state new facts and submit new evidence in the appeal.¹⁵⁸

Besides ordinary remedy appeal, legal remedies of extraordinary nature are limited to motion for *restitutio in integrum* (*prijedlog za povrat u prijašnje stanje*), while the request for protection of legality (*zahtjev za zaštitu zakonitosti*)¹⁵⁹ is no longer available. As for the review (*revizija*) the situation is not as clear, but scholars argue that under the current law the so-called extraordinary review is available in non-contentious proceedings.¹⁶⁰

4.4.2. Grounds for challenging foreign judgement.

The recognising the foreign judgment or recognising its enforceability may be appealed on four basic grounds in the CPA and special grounds in the ZRSZ or ZMPP as the case may be. General grounds in CPA are: substantial violation of the procedural rules, erroneous or incomplete establishing of facts, and erroneous application of applicable law. In the ZRSZ and ZMPP the grounds are discussed below under 4.4.3.

¹⁵⁴ These proceedings are subject to Court Non-Contentious Proceedings for the Kingdom of Yugoslavia Act (*Zakon o sudskom vanparničnom postupku za Kraljevinu Jugoslaviju*), Službene novine 175, 26 July 1934 (hereinafter: ZVP), and applicable in Croatia based on the *Zakon o načinu primjene pravnih propisa donesenih prije 6. travnja 1941. godine*, Narodne novine 73/1991.

¹⁵⁵ Art. 101(3) of the ZRSZ, and Art. 72(3) of the ZMPP.

¹⁵⁶ Art. 12(3) of the ZVP.

¹⁵⁷ Art. 101(4) of the ZRSZ.

¹⁵⁸ Art. 12(2) of the ZVP.

¹⁵⁹ Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama Zakona o parničnom postupku*), Narodne novine, 117/2003, abolished this remedy.

¹⁶⁰ Availability of review in the proceedings concerning recognition and enforcement of foreign judgment came before the Constitutional Court of the Republic of Croatia, which confirmed that there is no violation of constitutional rights (no discrimination of foreign citizens) because the Supreme Court of the Republic of Croatia dismissed the motion for review against the decision of the High Commercial Court confirming the first-instance decree refusing to recognise and enforce a foreign judgement. The reason for the Supreme Court to dismiss the review was the provision of Art. 99(2) of the then Courts Act (Narodne novine 3/1994, 100/1996, 131/1997 and 129/2000), according to which the review was not allowed in the non-contentious proceedings. *Ustavni sud Republike Hrvatske*, no. U-III-2096/2002, 9 June 2004, Narodne novine 95/2004. In the Court Act currently in force there is no such provision. Commentators argue that so-called extraordinary review in Art. 385(2) should be considered available in principle in all non-contentious proceedings. Aleksandra Maganić, Nužnost reforme hrvatskog izvanparničnog prava, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 27 1 (2006) 465-497, accessible at <https://hrcak.srce.hr/file/12478> (last visited on 4 April 2018), especially 479.

4.4.3. Please indicate what are the differences compared to the grounds in B IA.

Foremost difference under the ZRSZ and ZMPP is that a foreign judgment to produce effects in the territory of Croatia, it has to be recognised and enforced (*exequatur*) in the special proceedings (or *incidenter*) before a Croatian court. Unlike, the B IA, the ZRSZ and the ZMPP require that the judgment is unappealable (final), and enforceable if the request is also for recognition of enforceability. According to Art. 87 of the ZRSZ and Art. 67 of the ZMPP, in addition to the judgment, the applicant has to submit the certificate of the competent court or other organ certifying that that the decision is unappealable (final). Art. 67(2) of the ZMPP, additionally mentions the certification of enforceability as one of the prerequisites for enforcement. According to Art. 38 of the B IA, the judgment which is being recognised and enforced may be challenged in the Member State of origin.

Furthermore, there are certain differences between legal grounds for refusing recognition and enforcement according to the ZRSZ¹⁶¹ and ZMPP on the one hand, and B IA on the other. The ZRSZ requires reciprocity in the recognition and enforcement proceedings. According to Art. 94 of the ZRSZ, a foreign judgment will not be recognised if there is no reciprocity. The non-existence of the reciprocity is not an obstacle to the recognition and enforcement of judgment rendered in matrimonial causes or disputes concerning the determination and contestation of paternity or maternity or if it is applied for by a Croatian citizen. The reciprocity is presumed until contrary is proved. If there is a doubt as to the existence of the reciprocity, the Ministry of Judiciary has to furnish an explanation. The reciprocity required in Art. 94 is factual reciprocity, meaning that the authorities of a judgment country of origin have to recognise and enforce judgments rendered by Croatian courts. Arts. 93-96 of the ZRSZ refer only to foreign judgments on the personal status and are not relevant for the topic of this report. Reciprocity is no longer a requirement in the ZMPP, meaning that ZMPP is in that respect similar to the B IA.

Likewise the B IA, the ZRSZ in Art. 88 and ZMPP in Art. 68 that a foreign judgment will not be recognised and enforced if the court finds, upon request of the person against whom that decision was rendered, that that person could not have had taken part in the proceedings because of a procedural irregularity, i.e. person's right to be heard was violated. Under the ZRSZ it was further explained that the person against whom the judgment was rendered will be considered to be unable to take part in the proceedings if any summons, writ or decision by which the proceedings were started had not been served upon him personally or that no such service had been attempted, unless he has in any way entered into proceedings on the merits at first instance.

Another similarity is if the judgment at issue was rendered in the proceedings for which exclusive jurisdiction is reserved to domestic courts, or courts of a particular Member State, in Art. 89 of the ZRSZ and Art. 69(1) of the ZMPP. Unlike Art. 45(1)(e) of the B IA, the ZRSZ does not mention provisions protecting the weaker parties, since there are no such provisions in the section on jurisdiction. However, Art. 69(3) of the ZMPP refers to the sections of the B IA on weaker parties stating that jurisdiction established in contrariety to those provisions presents a ground for refusal for refusing recognition and enforcement. Additionally, in Art.

¹⁶¹ The translation of the 1982 ZRSZ that was used for the purposes of this report is published in Željko Matić, The Yugoslav Act Concerning Private International Law, *Netherlands International Law Review*, 30 2 (1983), 220-239.

69(2), the ZMPP states that the recognition of the foreign judgment will be refused if the court which rendered the decision established its jurisdiction on defendant's presence or the presence of his property in the forum, and such presence is not directly connected to the object of proceedings. Provision on exorbitant jurisdiction is a novelty and is certainly motivated by the B IA and its predecessors, but it was already discussed in the commentaries to the ZRSZ under the public policy (see second paragraph below).

In similar fashion to Art. 45(1)(c) and (d) of the B IA, Art. 90 of the ZRSZ and Art. 70(1) of the ZMPP provide that the foreign judgment will not be recognised if in that same matter a Croatian court or other body has rendered a final decision or if another foreign judgment that was rendered in the same case has been recognised (and may be recognised, as per ZMPP). However, Art. 90 of the ZRSZ and Art. 70(2) of the ZMPP also prescribe that a court will stay the recognition of a foreign judgment if before a Croatian court there is an earlier instituted proceedings pending in the same matter and between the same parties, until the final termination of these proceedings. It follows that according to Croatian law, the domestic *lis pendens* has the priority over the foreign *res judicata*, whereas the situation seems reverse under the B IA.

Just like the B IA, Art. 91 of the ZRSZ and Art. 71 of the ZMPP provide for refusal of the recognition and enforcement of the foreign judgment if it would be contrary to public policy (the exact term used in ZRSZ is "basic principles of social organisation laid down by the Constitution"). In the court practice this is understood as "minimum norms of law and morals which are considered inviolable in a certain state."¹⁶² The scope of the term public policy seems to be different in the ZRSZ, ZMPP on the one hand, and B IA on the other. Public policy under Art. 91 of the ZRSZ is understood as to cover not only material aspects, but also procedural ones, like for instance, exorbitant jurisdiction.¹⁶³ On the contrary, the CJEU made clear in *Krombach v Bamberski*¹⁶⁴ that a court of the Member State of enforcement is not allowed to take into consideration the criteria on which a court of the Member State of origin established its jurisdiction.

4.5. Remedies concerning enforcement of foreign judgements according to B IA following the abolishment of exequatur.

4.5.1. Remedies in the Member State of origin regarding the enforcement title itself. Do these remedies influence the enforcement procedure in the Member State of enforcement?

If the legal remedy is submitted against the enforcement title document debtor may motion for deferment explained in 4.2.2. The following grounds within Art. 65 of the EA are relevant within the scope of the B IA: 1. legal remedy filed against the decision based on which enforcement was ordered; 2. motion for *restitutio in integrum* has been filed in the proceedings in which the decision was adopted based on which execution was ordered, or a motion for retrial; and 3. an action has been filed to have the settlement or a notarial deed serving as basis for enforcement, repealed, or an action to annul it. In addition to this, the

¹⁶² *Trgovački sud u Zagrebu*, decree of 10 January 2013, R1-309/12.

¹⁶³ Mihajlo Dika, in: Mihajlo Dika /Gašo Knežević/Srđan Stojanović, *Komentar Zakona o međunarodnom privatnom pravu*, (Beograd: Nomos, 1991), 303.

¹⁶⁴ CJEU, C-7/98, EU:C:2000:164.

debtor has to make it likely that he or she will suffer irreparable damage or nearly irreparable damage or violence unless the enforcement is deferred.

As stated under 3.1.9., if the enforcement title document is repealed, altered, nullified or no longer in force pursuant to a binding decision or has no effect as otherwise established, enforcement is suspended *ex officio*.¹⁶⁵

4.5.2. Refusal of enforcement. What and/or which are the proceedings in your Member State (of enforcement)? Present the procedural aspects of the application for refusal and the role of national procedural law (Art. 47).

"Art. 47

1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Art. 75 as the court to which the application is to be submitted.

2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.

3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them.

In the latter case, the court may require the other party to provide those documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties."

The question arises as to whether the request for refusal of enforcement may be submitted to the enforcement court once the enforcement proceedings have commenced or there has to be the separate proceedings for refusal of enforcement. It appears that the separate proceedings could be commenced. Furthermore, it seems that also the court deciding on enforcement might be the one to decide on the request for refusal of enforcement as well because Art. 46 of the B IA states that on the application of the person against whom enforcement is sought, the enforcement of a judgment will be refused where one of the grounds referred to in Art. 45 of the B IA is found to exist. One issue that was discussed in this respect during the project meetings was whether the enforcement proceedings are the right proceedings for deciding on the refusal of enforcement. However, in Croatian law it seems that this in general should not be as problematic as in some other legal systems, for the below reasons.

Namely, both types of proceedings, enforcement proceedings under EA, and recognition and enforcement proceedings under the ZRSZ and ZMPP, are non-contentious. Furthermore, the courts competent for actual enforcement are basically the same as those competent for refusal of enforcement under B IA. The courts to which the applications are to be submitted pursuant to Arts. 36(2), 45(4) and 47(1) of the B IA, in the Republic of Croatia are the competent municipal courts in civil matters, and the competent commercial courts in commercial matters. All municipal courts are competent to rule on the recognition and enforcement of the decisions of foreign courts. In the Republic of Croatia, an appeal against a decision on an application for refusal of enforcement should be lodged with the county court through the competent municipal court in civil matters, and with the High Commercial Court through the competent commercial court in commercial matters.¹⁶⁶ No further appeal may be lodged

¹⁶⁵ Art. 72(1) of the EA.

pursuant to Art. 50 of the B IA under Croatian national law, only the extraordinary legal remedies might be available as explained in 4.1.1.

Problematic in this respect may be the direct collecting procedure before the FINA, where no court instances are involved.¹⁶⁷ This situation would necessarily entail instituting the separate proceedings for refusal of enforcement, as the FINA cannot decide on this issue.

4.5.3. What are your own specifics regarding required documents?

In the proceedings for refusal of enforcement, Art. 47(3) of the B IA provides that the applicant has to provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it. The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents. Under the Art. 36(1) of the EA, the Croatian enforcement court will require neither the documents on the basis of which the enforcement is applied, nor enforcement certification, if it has been the one deciding on the merits. In all cases related to B IA, such provision would not be applicable (as the judgments are from other Member States) and the Croatian courts will most probably always require submission of the judgment. For instance, the fact that a certain foreign judgment has been invoked in some proceedings on the merits before the Croatian court and is part of the active or archived file there, still means that the judgment will have to be submitted to the court along with the request for refusal of enforcement. Likewise, the official language of the proceedings in Croatia is Croatian and the alphabet is Latin, unless particular court operates in other languages and alphabet.¹⁶⁸ The example of the latter are courts in certain parts of the country where minority rights are protected under the principle is the equality in the use of Croatian and minority languages. The most recent data for 2015 state that only 6 proceedings have been conducted in a language different than Croatian.¹⁶⁹ However, it is not certain that the option to have the proceedings conducted in a minority language may also be relied upon by a foreign citizen, who is not member of the minority living in Croatia. It depends also on the understanding of the notion of “official language” of the Republic of Croatia within the meaning of Art. 57 of the B IA, and whether it captures the minority languages.

The documents need to be submitted in sufficient copies for the court and the opposing party.¹⁷⁰

¹⁶⁶ See the complete list: <https://e-justice.europa.eu/cdbCompetentAuthPrint.do?clang=en&articleContentId=-1&articleId=4&taxonomyId=350&msId=40> (last visited on 10 March 2018)..

¹⁶⁷ See 1.6.

¹⁶⁸ Art. 6 of the CPA. Likewise, Art. 12 of the Constitution of the Republic of Croatia provides that the Croatian language and Latin alphabet are in official use in Croatia and that in individual local units another language and alphabet may be in official use under the conditions provided in the acts.

¹⁶⁹ Vlada Republike Hrvatske, Izvješće o provođenju Ustavnog zakona o pravima nacionalnih manjina i o utrošku sredstava osiguranih u Državnom proračunu Republike Hrvatske za 2015. i 2016. godinu za potrebe nacionalnih manjina, Zagreb (2018), accessible at <https://vlada.gov.hr/UserDocsImages//Sjednice/2018/01%20sije%C4%8Danj/74%20sjednica%20VRH//74%20-%2015.pdf> (last visited on 25 May 2018), 10-11.

¹⁷⁰ Art. 7(6) of the EA.

4.5.4. Service of documents and representation in your member state. How will service of documents pursuant to B IA be conducted in your member state? Please elaborate.

Service of documents relevant under the B IA will be carried out pursuant to the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000.¹⁷¹

Representation is an area where discrepancy has been noted between the Croatian CPA and the B IA. Therefore the rules of the CPA should not apply to the extent they are contrary to the B IA. For instance, Art. 146(1) of the CPA provides that if a person submitting the claim is placed aboard, and does not have a legal counsel in Croatia, that person is obliged to appoint the representative for receiving documents in Croatia; otherwise the court will dismiss the claim. This provision if applied to enforcement proceedings would be in contradiction with Art. 41(3) of the CPA which states party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed, nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.¹⁷² The same is true for other provisions of Art. 146 of the CPA, whereas the provisions of Art. 147 of the CPA are not contrary to the B IA as they are applicable regardless of the nationality or the domicile of the parties.

4.5.5. Opposition by the defendant (objection against recognition and enforcement of foreign judgement) – prerequisites and procedure. Does the law envisage ‘*incidenter*’ or separate procedure. Separate procedure at the first instance/at the second instance. Elaborate on the particularities of the herein provided issues.

The defendant’s objections against the recognition and enforcement of foreign judgment captured by the B IA may be raised in the same proceedings (*incidenter*) or in the separate proceedings. This conclusion may be drawn as a parallel to the provisions of domestic private international law which allow for deciding *incidenter* on the recognition or enforcement with the effect *inter partes*, provided that no final decision has been rendered on recognition or enforcement by Croatian courts.¹⁷³

4.5.6. Second appeal, (third instance appeal) as a remedy – is it to be utilized only in cases of violation (of procedural or substantive law) or can it be used for control of facts as well?

Comment: In Slovenia the law provides for appeal (*pritožba*) or revision (*revizija*). Whilst the former generally encompasses the control of facts, the latter does not permit for such control.

No second appeal may be lodged pursuant to Art. 50 of the B IA under Croatian national law, only the limited extraordinary legal remedies are available as explained in 4.1.1.

¹⁷¹ OJ L 324, 10.12.2007, pp. 79-120.

¹⁷² Art. 47(4) of the EA.

¹⁷³ Art. 72(3) of the ZMPP.

4.5.7. Who is eligible to apply for a refusal of recognition or enforcement? How do you understand the euro-autonomous interpretation?

A person against whom the enforcement is sought may apply for a decision on refusal of enforcement under Art. 46 of the B IA, while the refusal of recognition may be applied for by any interested party under Art. 45 of the B IA. The person against whom the enforcement is sought is the enforcement debtor. Under Croatian law, a third person claiming to have a right on the object of enforcement that prevents enforcement may submit an objection against enforcement, requesting enforcement on the object to be declared impermissible under Art. 59(1) of the EA. This however is not the refusal of enforcement under the B IA, but under the EA which is completely permissible pursuant to Art. 41(1) and (2) of the B IA. Thus, where a party is relying on the grounds in national law, not the B IA, the circle of eligible persons is also defined under the national law. Thus the euro-autonomous definition applies only when it comes to the segments of the proceedings (such as remedies, for instance) regulated under the B IA, whereas the national definition applies in all other situations provided it is not incompatible with the B IA. Incompatible does not mean merely different, rather it stands for the situations in which the two cannot coexist without adversely affecting the purpose and goals of the B IA.

4.5.8. Suspension and limitation of enforcement proceedings (Art. 44). How is it regulated in your legislation?

“Art. 44

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:

- (a) limit the enforcement proceedings to protective measures;
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) suspend, either wholly or in part, the enforcement proceedings.”

4.5.9. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

4.6. Protective measures.

4.6.1. Which protective measures are available, in national perspective, according to Art. 40?

Article 40 of the B IA provides that an enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed. Protective measures are regulated in Title 3 of the EA starting with Art. 290 which provides for the *mutatis mutandis* application of provision on enforcement. Means of protection available under Croatian law are limited to those listed in the EA (*numerus clausus*).¹⁷⁴ These are: securing the pecuniary claim by compulsory establishing the lien under Art. 295 et seq., court and notarial security in the form of a lien agreed upon by the parties under Art. 299 et seq., court and notarial security by means of transfer of ownership over a thing or transfer of the right under Art. 309 et seq., securing the claim by preliminary

¹⁷⁴ Art. 291 of the EA.

enforcement under Art. 328 et seq., securing the claim by preliminary measures under Art. 331 et seq. and securing the claim by provisional measures under Art. 340 et seq.

4.6.2. What are the prerequisites for these protective measures?

Securing claim by compulsory establishing the lien is conditioned upon the existence of the enforcement title document in which the claim is established.¹⁷⁵ In the scholarly writings, the requirement is added that the enforcement title document has to be enforceable.¹⁷⁶ Further conditions are that the claim is pecuniary, the object of security is immovable registered in the Land Registry to the name of the enforcement debtor.¹⁷⁷

Court and notarial security in the form of a lien agreed upon by the parties means that the parties conclude a voluntary agreement securing the claim, which may be pecuniary or not and may be determined or determinable.¹⁷⁸ The object on which the lien is established to secure the settlement of the claim may be owned by the debtor or a third party.¹⁷⁹ The object may be the moveable, debtor's receivables, debtor's wages or other income, bank account, intellectual property right (patent, trademark, industrial design, semi-conductor topography, copyright and related rights) and respective licence, concession, lease, personal servitudes, securities, and company shares.¹⁸⁰ The security agreed before the court has the binding effect of the court settlement under Croatian law meaning that this is final in regard to the existence of the claim and ways to settle it, and enforceable if the claim is not settled upon maturing.¹⁸¹

Court and notarial security by means of transfer of ownership over a thing or transfer of the right has to be agreed upon by the parties before the court or a Notary Public, under Art. 310. It is commonly referred to by the name of fiduciary security (*fiducijarno osiguranje*). The conditions are similar to the above security in the form of a lien. The claim may be existing or future, determined or determinable, pecuniary or non-pecuniary.¹⁸² The claim should not be matured at the time of the conclusion of the agreement, but its maturity has to be agreed upon by the parties at the time of making the agreement.¹⁸³ The object, owned by the debtor or a third party, may be any of those mentioned in relation to the lien above including the immovables. The security agreed before the court has the binding effect of the court settlement under Croatian law.¹⁸⁴

Preliminary enforcement is another way of securing the claim under the EA. The conditions are that: 1. the claim is non-pecuniary, 2. the creditor has the judgement rendered in the contentious proceedings which is not (yet) enforceable, 3. the claim cannot be secured by pre-entry in a public registry, 4. there is an objective risk (probability) that by postponing the enforcement until enforceability the enforcement would be prevented or considerably aggravated, and 5. the creditor deposits the guarantee for potential damage to the debtor.¹⁸⁵

¹⁷⁵ Art. 269 of the EA.

¹⁷⁶ Mihajlo Dika, *Građansko ovršno pravo*, I. knjiga (Zagreb: Narodne novine, 2007) 743.

¹⁷⁷ Mihajlo Dika, *Građansko ovršno pravo*, I. knjiga (Zagreb: Narodne novine, 2007) 744.

¹⁷⁸ Arts. 300-302 of the EA.

¹⁷⁹ Art. 306 of the EA.

¹⁸⁰ Art. 300 of the EA.

¹⁸¹ Art. 301 of the EA.

¹⁸² Arts. 310 and 311 of the EA.

¹⁸³ *Arg.* Art. 310(2) of the EA, which provides that the agreement has to determine when the claim will mature.

¹⁸⁴ Art. 310(4) of the EA.

¹⁸⁵ Art. 329 of the EA.

Ordering the preliminary enforcement is within the court's discretion and even if all the requirements are met the court may decide not to order it if that is not opportune.¹⁸⁶ Under the particular circumstances of the case, the court may order the preliminary enforcement prior to providing the debtor with the opportunity to be heard.¹⁸⁷ In such a situation, the court may dispense with the enforcement following the debtor's objection if the debtor proves that he or she would suffer irreparable harm or nearly irreparable harm as a consequence of preliminary enforcement or may condition that by debtor's guarantee.¹⁸⁸

Claim may be secured by preliminary measures, based on: 1. court or administrative decision which is not (yet) enforceable, 2. settlement entered into before the court or administrative body if the claim has not matured yet, and 3. notarial decision or notarial deed if the claim has not matured yet. The condition to order preliminary measure is the probability of the risk that in the absence of the measure the realisation of the claim would be prevented or considerably aggravated.¹⁸⁹ The object of the ordered measure may consist in one or more of the following: pre-entry of the lien in the Land Registry, freezing of the bank account, and all measures which may be voluntarily agreed upon by the parties in the form of lien before the court or Notary Public (except registration of lien).¹⁹⁰

Securing the claim by provisional measures is an option available before, during and after the court or administrative proceedings, up to the point when the enforcement is completed.¹⁹¹ Provisional measure may relate to the pecuniary or non-pecuniary claim, and to mature or not yet matured claim.¹⁹² The conditions to order provisional measure to secure the pecuniary claim are: 1. probability of the claim, 2. probability of the risk that the realisation of the claim will be prevented or made considerably more difficult by the debtor.¹⁹³ The conditions to order provisional measure to secure non-pecuniary claim: 1. probability of the claim, , and 2. probability that the debtor will prevent or make significantly more difficult realisation of the claim, especially where the current state of affairs would change, or necessity of the measure to prevent violence or irreparable threatened damage.¹⁹⁴ See in details 1.18.1. and 1.18.2.

4.6.3. How long do protective measures last (duration period)?

Preliminary measure may be ordered for the period not exceeding fifteen days following the day when the conditions for enforcement have been fulfilled.¹⁹⁵

4.6.4. Effects of protective measures – *Auszahlungsverbot (Verfügungsverbot)* or pledge (mortgage).

Securing claim by compulsory establishing the lien under Art. 296 of the EA, has an effect that the enforcement may later on be carried out even if the third party becomes the owner of

¹⁸⁶ Mihajlo Dika, Građansko ovršno pravo, I. knjiga (Zagreb: Narodne novine, 2007) 825.

¹⁸⁷ Art. 330(4) of the EA.

¹⁸⁸ Art. 330(6) of the EA.

¹⁸⁹ Art. 332 of the EA.

¹⁹⁰ Art. 335(1) of the EA.

¹⁹¹ Art. 341(1) of the EA. See also 3.1.12.

¹⁹² Arts. 343(1), 344 and 346 of the EA.

¹⁹³ Art. 344 of the EA.

¹⁹⁴ Art. 346(1) of the EA.

¹⁹⁵ Art. 337(2) of the EA.

the immovable in question.¹⁹⁶ Securing the claim in the proceedings before the court by agreeing on a lien under Art. 301 of the EA has the effect that the party acquires a lien in respect to the object in question. This means that the enforcement may later on be carried out against the third party which acquired the ownership over the object.¹⁹⁷

The fiduciary security entailing the unconditional transfer of ownership or right to the creditor, means that the creditor becomes an owner, while the transferor ceases to be one. Upon settlement of the claim, the transferor has only the claim for return of the ownership or the right based on the agreement, but no right *in rem*.¹⁹⁸ In relation to immovable, the creditor may request, on the basis of the agreement on fiduciary security containing the *clausula intabulandi*, the registration of ownership in the Land Registry.¹⁹⁹ For movables and rights the ownership is transferred by signing the minutes containing the agreement on fiduciary security and registering the ownership transferred for the purpose of security in the Registry of Court and Notarial Securities of Creditor's Claims against Movables and Rights.²⁰⁰ Unless otherwise provided in the agreement, the transferor of the property may continue using it.²⁰¹ There are detailed special provisions on effects of the transfer upon maturity of the secured claim and failure to settle it, including the sale of the object.²⁰²

By ordering the preliminary measure, the creditor acquires the lien over the object of security.²⁰³ On the contrary, by ordering the provisional measure the lien is not acquired.²⁰⁴ However, the debtor's transactions concerning the interests in movable which is an object of the provisional measure securing a pecuniary claim have no legal effect, except in case of honest acquirer.²⁰⁵ The prohibition to transfer or encumber immovable which is entered into the Land Registry has an effect of overriding the acquisition of the right in respect to this immovable by a third party, in the sense that the creditor may nevertheless have the enforcement ordered in respect to that immovable once the claim becomes enforceable.²⁰⁶ The effect of the prohibition to the enforcement debtor to voluntarily fulfil his or her obligation to the enforcement debtor and prohibiting the enforcement debtor to receive the fulfilment of this obligation, or to dispose of his or her claims, and the effect of the order to the bank to deny payment from the debtor's account to the enforcement debtor or a third party, when requested by the enforcement debtor, of the amount in regard to which the measure is ordered, is such that enforcement creditor may request the enforcement debtor or the bank to compensate the damage caused to him or her as a result of violation of prohibition.²⁰⁷ When it comes to measures securing the non-pecuniary claim, the effect of the prohibition to transfer or encumber the immovable and the accompanying entry of that prohibition in the Land Registry is that the third party may acquire the rights registered in

¹⁹⁶ Art. 298 of the EA.

¹⁹⁷ Art. 303 of the EA.

¹⁹⁸ Art. 323 of the EA. Mihajlo Dika, *Građansko ovršno pravo*, I. knjiga (Zagreb: Narodne novine, 2007) 797.

¹⁹⁹ Art. 312 of the EA. In regard to the immovables not registered in the Land Registry there is a special rule in Art. 313(1) of the EA.

²⁰⁰ *Zakon o Upisniku sudskih i javnobilježničkih osiguranja tražbina vjerovnika na pokretnim stvarima i pravima*, Narodne novine 121/2005. Art. 313(2) and (3) of the EA. The exception relates to intangible shares under Art. 313(4) of the EA.

²⁰¹ Art. 315 of the EA.

²⁰² Arts. 316 and 322 of the EA.

²⁰³ Art. 335(3) of the EA.

²⁰⁴ Art. 345(2) of the EA.

²⁰⁵ Art. 345(3) of the EA:

²⁰⁶ Art. 345(4) of the EA.

²⁰⁷ Art. 345(5) of the EA. The enforcement debtor has also all other rights under the law of obligations.

respect to that immovable after the entry of the prohibition, only if the creditor's application to realise the claim in relation to which the entry is made, is rejected and the decision is unappealable.²⁰⁸ The effect of all other prohibitions securing the non-pecuniary claim is that enforcement creditor may request the persons to whom the prohibition as addressed to compensate the damage caused to him or her as a result of violation of prohibition.²⁰⁹

4.6.5. Can an enforcement motion be refused entirely due to the objection regarding foreign enforcement title or is this just limited to the security measures?

It is possible, and most often the case, that the court decides on the application for enforcement without first notifying the debtor of the application and enabling him or her to be heard.²¹⁰ On its own motion the court may refuse the application for enforcement entirely based on the grounds under the EA such as that the document is not the enforcement title document or has no legal effect.²¹¹ However, following the debtor's objection (usually in the appeal), the court would be able to annul the decree ordering enforcement in its entirety on the grounds in the B IA.

4.7. Grounds for refusal.

4.7.1. What are the past characteristics in your member state regarding grounds for refusal of recognition? Do you see any new problems regarding grounds for refusal?

In the ZRSZ, which will soon be out of force, the reciprocity requirement seems to have been burdening the courts and causing injustice to individual parties. On the other hand, there seems to be a solid reason for introducing in the ZMPP, which will enter into force in January 2019, the obstacle to recognition and enforcement relative to respect for weaker parties jurisdiction mirroring that in the B IA.

4.7.2. What is your opinion on the fact that the grounds for refusal in the B I (44/2001) apply in B IA as well?

Apparently, the level of mutual trust is low. Also, certain differences still require safeguards through the public policy clause.

4.7.3. Please comment on the most problematic grounds in your member state in more detailed manner.

Mentioned reciprocity requirement has cause a long-term non recognition of Austrian judgments on maintenance in Croatia. The system in Austria was based on international convention which was never concluded with Croatia, and hence no Croatian judgment on maintenance was recognised there. As a result, no Austrian decision could have had been recognised in Croatia either, due to the requirement of reciprocity.

²⁰⁸ Art. 347(4) of the EA.

²⁰⁹ Art. 347(5) of the EA.

²¹⁰ Arg. Art. 42(2) of the EA.

²¹¹ Mihajlo Dika, Građansko ovršno pravo, I. knjiga (Zagreb: Narodne novine, 2007) 303 Under Croatian law, the court would have a duty to refuse the application for enforcement in case of an appealable (non-final) decision, which should not be the case in the enforcement proceedings under the scope of the B IA as the enforcement of a foreign judgment is sometimes possible under the law of the Member State of origin in the absence of its unappealability.

Also it seems that the courts sometimes do not understand the implications of the public policy and are overly lenient in protecting Croatian public policy. A case in point is recognition and enforcement before Croatian court of a foreign decision on costs, which relates to the judgement on the merits in which foreign law was applied with the effect of discrimination upon the party objecting to recognition and enforcement. The Croatian court nevertheless, ruled that the decision on costs is not contrary to Croatian public policy.²¹²

4.7.4. Grounds regarding related actions and irreconcilable judgements. Do you find any open issues in your member state in this regard?

No.

²¹² See details Ivana Kunda, Croatia, in: Paul Beaumont, Mihail Danov, Katarina Trimmings, Burcu Yüksel (eds.), *Cross-Border Litigation in Europe*, (Oxford and Portland, Oregon: Hart Publishing, 2017) 265-272.

5. Final critical evaluation of B IA – what necessary adaptations to national legislations need to be done?

5.1. Does B IA in your opinion actually simplify, speed up and reduce the costs of litigation in cross-border cases concerning monetary claims and eases cross-border enforcement of judgments?

Yes. In many cases it is expected that there will be no court proceedings, other than actual enforcement proceedings as the effects of judgments are automatically recognised.

5.2. Which is, from the creditor's point of view, the most convenient alternative in your member state in case of cross-border collection of debts in the EU?

5.3. Language issues: Is it possible or advisable to choose the form in the language of the debtor?

This is not very likely as explained in 4.5.3.

5.4. Do you anticipate that the principle of national procedural autonomy shall be adversely affected by the provisions of B IA?

Comment: *The principle (in essence) provides that member states are free to choose the remedies and procedures which govern the enforcement of EU law. The principle is not confined to the enforcement of substantive rights, even more so, its importance is revealed in cases such as the one at hand. B IA (in part) relies on remedies provided by national procedural law. The latter must therefore confirm the euro-autonomous nature of B IA and provide for adequate remedies in terms of interpretation, effectiveness, effective judicial protection of non-discrimination. If these prerequisites are not duly respected, certain corrections to national procedural law are in order, perhaps even ad hoc introduction of new remedies.*

It seems that there are sufficient guarantees under the current Croatian legal regime for enforcement of judgments, save in cases of competence of the Notary Publics and the FINA.

5.5. Costs. Since the recognition and enforcement of foreign judgements no longer requires *exequatur*, what is your take on the costs which will incur with respect to enforcing judgments under B IA in comparison to enforcing them under BI? Will it be more cost – effective?

Comment: *Try to indicate the specific costs which may arise in relation to the procedure envisaged under the B IA. Tariffs, lawyer's fees, etc.*

The specific costs related to recognition or enforcement of foreign judgments under the B IA are the same as under the ZRSZ or ZMPP for the comparable actions. Thus there is a court fee to be paid for an application and a decision when serviced pursuant to Arts. 3 and 4 of the Court Fees Act (hereinafter: CFA).²¹³ There is a long list of exceptions to the obligations to

²¹³ *Zakon o sudskim pristojbama*, Narodne novine 74/1995, 57/1996, 137/2002, (26/2003), 125/2011, 112/2012, 157/2013 and 110/2015.

pay these fees, such as for employees in relation to employment dispute, unions in collective labour disputes, plaintiffs asking damages resulting from environmental pollution, certain humanitarian organisations, refugees etc.²¹⁴ The fees are calculated depending on the value of the claim, in enforcement proceedings depending on the requested value, and in other non-contentious proceedings based on the same principles as for civil proceedings.²¹⁵ In the proceedings for remedy the court fees are calculated on the basis of the value of the challenged segment.²¹⁶ In order to understand the system, here are some examples: for the request for recognition of the foreign judgment the fee is HRK150,²¹⁷ for the decree on recognition of the foreign judgement or decree for deferment of the enforcement the fee is HRK100.²¹⁸ However, there is a provision which cannot be applied in relation to EU citizens which states that in case the enforcement is applied for the fee for application is half the fee than in the case where the application is asked based on a foreign enforcement title document.²¹⁹ Thus, if the enforced value is between HRK3.000 and HRK6.000 the full fee would be HRK200, while the half fee would be HRK100. If the enforced value is HRK100.000 the full fee is HRK1.350. Finally, the amount of the court fee increases with the basic claim, but does not exceed HRK5.000.²²⁰ However, the fees in the amount available to Croatian citizens have to be charged also to EU citizens, because the discrimination is prohibited under EU law.

In the similar vein, the attorney's fees are calculated according to the value of the disputes defined in the Tariff on Reward and Cost Compensation to Attorneys (TRCCA).²²¹ For the application for enforcement the attorney's fee for the enforced value in between HRK2.500,01 and HRK5.000 amounts to HRK500, while for the enforcement value of HRK100.00 it is HRK1.000. The amount thus calculated cannot exceed HRK100.000.²²²

²¹⁴ Art. 16 of the CFA.

²¹⁵ Art. 21(1), 32 and 35 of the CFA.

²¹⁶ Art. 36 of the CFA.

²¹⁷ Tariff No. 1(4) of the CFA.

²¹⁸ Tariff No. 2(7) of the CFA.

²¹⁹ Tariff No. 2(5) of the CFA.

²²⁰ Tariff No. 1(1) of the CFA.

²²¹ *Tarifa o nagradama i naknadi troškova za rad odvjetnika*, Narodne novine ???

²²² Tariff No. 11(1) in conjunction with No. 7(1) of the TRCCA.

Terminology used in the questions

The use of a unified terminology can certainly ease the comparison between national reports. For the purposes of this questionnaire, the following definitions shall apply:

Action: Used in the sense of lawsuit, e.g. 'bringing an action' (starting a lawsuit, filing a suit).

Application: Request addressed to the court. Note: the term 'motion' is in B IA exclusively used for acts issued by the court.

Astreinte: Monetary penalties used as a means of enforcing judgments in certain civil law jurisdictions. A proper English term to describe '*astreinte*' does not exist.

Authentic instrument: A document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

- (i) relates to the signature and the content of the instrument; and
- (ii) has been established by a public authority or other authority empowered for that purpose

Cassation Complaint: Second appeal in the Romanic family of civil procedure (in the Germanic family one uses 'Revision' instead).

Civil Imprisonment: Imprisonment of a judgment debtor in order to force him to satisfy the judgment.

Claim / Defence on the Merits: Claim or defence which concerns the specific case at hand and not preliminary (procedural) issues. Opposite of preliminary defences.

Claimant: Before the Woolf Reforms designated as 'Plaintiff'. In your contributions, please only use 'claimant' (the term which is also used in B IA).

Counsel: Generic term for the lawyer assisting a party. We would advise to use this terminology instead of 'advocate', 'procurator', etc.

Court of origin: The court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Court settlement: A settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings.

Default: Omitting the execution of the required procedural act (e.g. where the summoned defendant does not appear).

Defaulter: Party in a civil action who does not execute the procedural act which should have been executed by him.

Enforcement: Use the term enforcement instead of execution.

Enforcement officer: Official involved in enforcing court rulings. Enforcement is part of the tasks of a '*huissier de justice*' in France and other jurisdictions belonging to the Romanic family of civil procedure.

Ex officio / Sua Sponte: Both ‘*ex officio*’ and ‘*sua sponte*’ are used to indicate that the judge may act spontaneously without being asked to do so by the parties. In other words, we are dealing with powers of the judge which he may exercise at his own motion.

Final judgment: Judgement, which is binding to parties and against which generally, no ordinary legal remedy is permitted.

Hearing: Session before the court, held for the purpose of deciding issues of fact or of law. For civil law jurisdictions, we would suggest to avoid using the terminology ‘trial’ (which in English civil procedure refers to a specific stage in litigation).

Interlocutory Judgment: All judgments which do not decide the merits of the case.

Interlocutory Proceedings: Proceedings which are not aimed at acquiring a final judgment on the merits in the case but aim at an intermediate, non-final decision in a pending lawsuit.

Judgment: Any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

For the purposes of Chapter III, ‘judgment’ includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

Judicial Case Management: An approach to litigation in which the judge or the court is given powers to influence the progress of litigation, usually in order to increase efficiency and reduce costs.

Main Hearing: In German: *Haupttermin*.

Means of recourse against judgments: General terminology to indicate all possible means to attack judgments, e.g. ordinary appeal, opposition, cassation, revision etc.

Member State of origin (MSO): The Member State in which in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered.

Member State addressed (MSA): The Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought.

Opposition: Act of disputing a procedural act or result, e.g. a default judgment.

Preclusion: The fact that a party is barred (precluded) from taking specific steps in the procedure since the period for taking these steps has expired (*‘Reihenfolgeprinzip’*).

Preliminary defences: ‘Exceptions’; (usually) procedural defences. Opposite of defences on the merits.

Process server: Official serving the summons on the opponent party. This is part of the tasks of a '*huissier de justice*' in France and other jurisdictions belonging to the Romanic family of civil procedure.

Second instance appeal: First appeal, not to be confused with a Cassation Complaint or Revision (i.e. second appeal or third instance appeal).

Statement of Case: General terminology for the documents containing the claim, defence, reply, rejoinder etc. Before the Woolf reforms these documents were indicated as 'pleadings'. In French: 'conclusions'.

Statement of Claim: Document containing the claim.

Statement of Defence: Document containing the defence.